



*Enhancing the Contribution of PTAs to
Inclusive and Equitable Trade*

**Innovation in PTAs Disciplines Towards
Inclusive Trade - Services**

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Services under the Int'l Trading System

Increasingly pursued under plurilateral & regional arrangements

- **Services were built-in agenda but did not receive priority attention** under the Doha Round
 - Extension of LDC services waiver achieved at MC10 (2015) - Preferential treatment of LDC services & services exporters
 - Possible outcome targeted at MC11 (10-13 December 2017)
 - (i) Disciplines on domestic regulations
 - (ii) Trade Facilitation Agreement for Services (TFS)
 - (iii) Services aspects of e-commerce
- **Plurilateral TISA negotiations** by 23 countries (70% of global services trade)
 - Seek to capture autonomous & preferential liberalization, including through Horizontal application of national treatment & non-application of MFN pending on critical mass
 - Estimates of TISA increasing bilateral exports in \$78 billion but such estimates often do not factor existing RTAs among participants (e.g. Chile has services RTAs with 19 of the 23 TISA participants) => Need for careful examination of services RTAs



Trends in services RTAs

Mega regionals, North-South and South-South RTAs

- **Mega regionals** enlarge the trade agenda with regulatory focus
 - **Trans-Pacific Partnership Agreement (TPP)** to create a regional market among 12 countries with 40% of global GDP and 24% of global exports
 - **Transatlantic Trade and Investment Partnership (TTIP)** would create the largest market with 50% of global GDP and 1/3 of global exports
- **North-South RTAs** have had the effect of extending services liberalization in DCs (e.g. Cariforum-EU EPA, replacing preference based relationships)
- **South-South regional initiatives** increasingly envisage “developmental integration” combining market opening with regulatory cooperation, productive capacity & infrastructure building
 - ASEAN Economic Community in 2015
 - China-ASEAN FTA with 1/3 of world population and 13% of global GDP
 - African CFTA by 2017
 - Greater Arab FTA
 - MERCOSUR; Andean Community; Caribbean Common Market

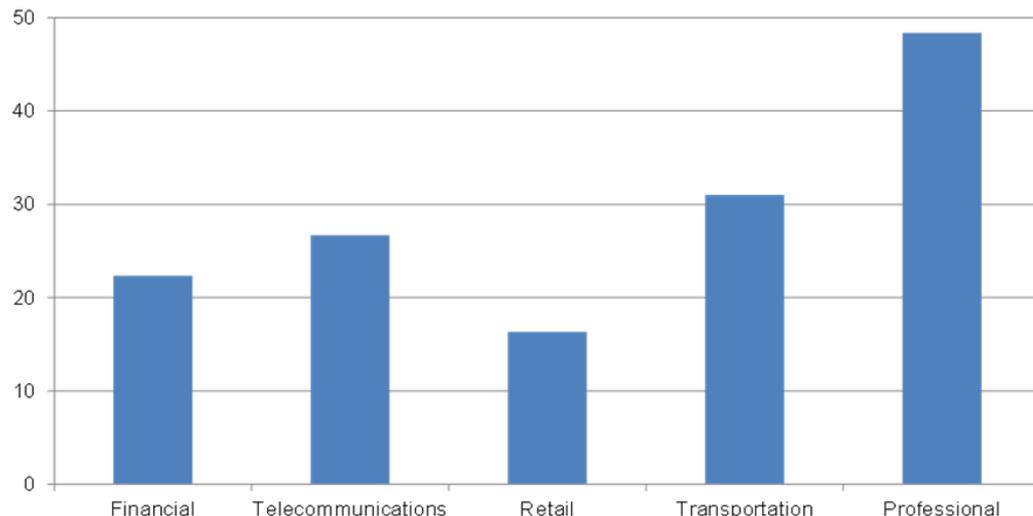


Liberalization of Services under RTAs

Regional services liberalization

- “Regulatory measures” may or may not act as trade barriers
 - Possible trade restrictive effects to be weighed against the legitimate public policy goals (e.g., information asymmetry, externalities, imperfect competition)
 - "Market access" relates to sectoral regulations
- Applied regulatory regime often more open than bound in GATS / RTAs
 - Applied level of “restrictiveness” is higher in professional services (mode 4) due to immigration regulations and licensing and qualifications
 - Restrictiveness is lower on financial services, although mode 1 tends to be more restrictive (reflecting the concern of allowing capital mobility)

Average services trade restrictions index



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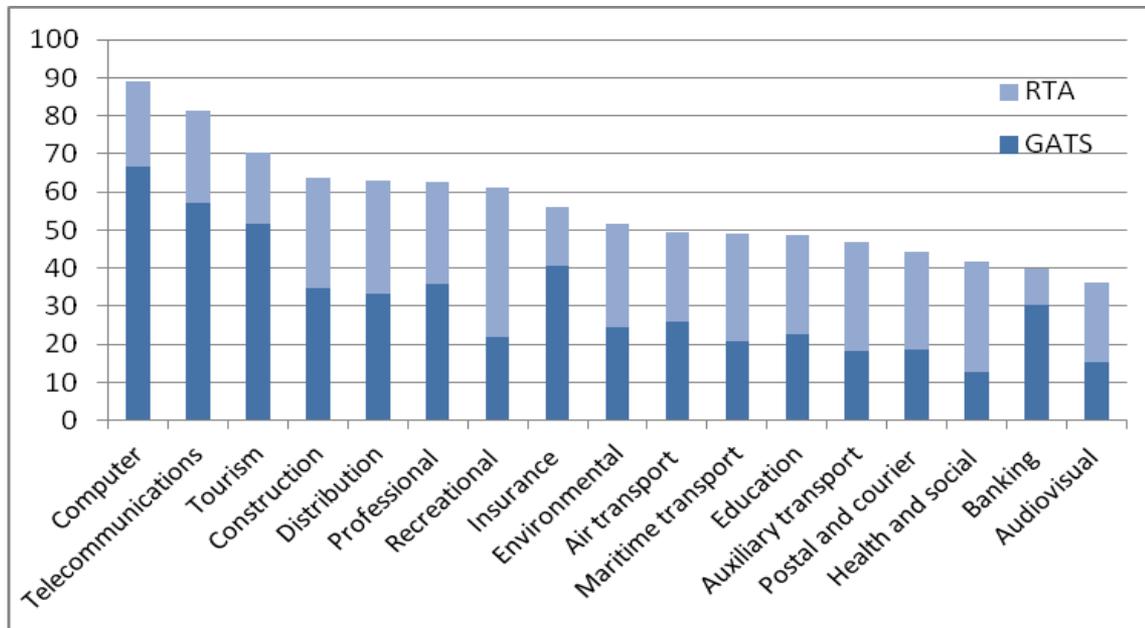
Source: UNCTAD calculations based on the World Bank's STRI.

Liberalization of Services under RTAs

RTAs commitments generally go beyond GATS

- GATS openness (as per GATS commitments) are high in financial services (119 countries), telecommunications (108 countries), transport (38 countries in maritime freight) and low in energy
- RTAs led to further liberalization of telecom & greatly increased commitments in transport subsectors (geographical proximity and bilateral relationships) but
- Limited improvements in banking services (preferences may lead to arbitrage)

Average indices of commitments under GATS and RTAs for all countries

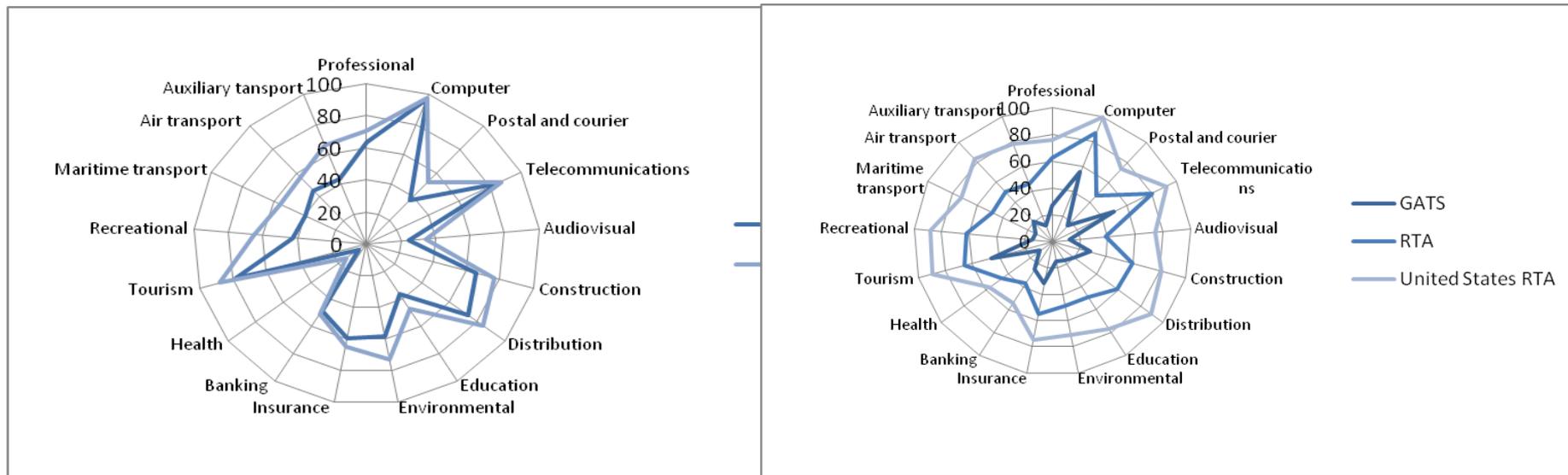


Liberalization of Services under RTAs

RTAs induce more liberalization on developing countries

- RTAs have greater effect on DCs than in developed countries in terms of GATS+ commitments
- Differences are explained by a higher level of GATS commitments in developed countries and by the asymmetric bargaining structure of North-South RTAs (e.g., greater opening under US RTAs)
- “GATS –” may happen when existing GATS commitments were downgraded in RTAs (e.g., subsidies) but a cross-reference to GATS schedules neutralizes any GATS-minus provisions

Average indices of commitments under GATS and RTAs
 Developed countries Developing countries



Liberalization of Services under RTAs

Development implications of innovative provisions need careful assessment

- **Negative list** requires full knowledge of the measures in place in all sectors and detailed scheduling (to avoid inadvertent liberalization), while the **positive list** allows more flexibility, while both approaches may lead to the equivalent openness
- TPP's **investment chapter** covers all investments (goods & services) while the chapter on **cross-border trade** include modes 1, 2 & 4
- Recent RTAs introduced new instruments for deeper liberalization
 - Commitments may be based on **applied levels** of market access
 - **Stand-still** requirements not allowing to decrease the conformity of the measure with respective obligations
 - **“Ratchet” clause** for automatic incorporation of further future measures
 - **Horizontal application of national treatment** to all sectors/modes
 - **“Third-party MFN”** to ensure a RTA party the best possible preferential treatment available from other RTA partners (could dissuade parties from engaging in ambitious market opening)
- **Investor-State DS** may lead to a “regulatory chill” for fear of legal challenges
- Disciplines on **State-owned enterprises** to ensure “competitive neutrality” with private companies may limit regulatory space



Regulatory cooperation under RTAs

Regulatory cooperation under RTAs pursued to facilitate trade

- More feasible among countries with supporting institutions and a similar level of development and regulatory preferences
- Greater emphasis on reducing regulatory discretion by promoting regulatory coherence and convergence in national standards
 - Mutual recognition and harmonization of qualification licensing requirements and procedures and technical standards
 - TPP proposes central coordination towards good regulatory practice and impact assessment of regulatory measures



Regulatory disciplines under RTAs (Telecom)

GATS+ disciplines on telecommunications (often based on GATS Reference Paper)

- The Republic of Korea – EU FTA provide for non-discriminatory access to telecommunication services (basic and value added)
- The ASEAN – Australia – New Zealand FTA included the new definition of facilities-based supplier and obligations to provide leased circuit services
- The EU and the US agreed on the Trade Principles for ICT services, which may inform TTIP negotiations, including network access and use, cross-border information flows, use of spectrum and interconnection

Emerging regulatory issues on telecommunications

- Network neutrality is essential when broadband access providers manage data traffic to avoid congestion due to scarcity of spectrum
- High wholesale prices for international mobile roaming, under the responsibility of regulatory authorities, require international cooperation
- Privacy, security and data protection is critical for cloud computing where data may be stored in a different country & data has become raw material for digital eco
- Certain RTAs include binding e-commerce commitments
 - Free data flows, no localization requirements, no disclosure of sources code, no technology transfer requirements, safeguarding network competition/ telecommunications



E-commerce under TPP/TISA

- E-commerce under TISA and TPP has many similarities:
 - Customs duties may not be applied on electronic transmissions;
 - TPP provides for legal frameworks consistent with the UNCITRAL Model Law on E-Commerce or the UN Convention on the Use of Electronic Communications;
 - Local presence requirements cannot be imposed;
- Cross-border information flows:
 - Acknowledge the importance of balancing the objectives of allowing cross-border transfer of information with legitimate public policy objectives (e.g. protection of personal information);
 - TPP says that measures to achieve legitimate public policy objectives may not constitute arbitrary or unjustifiable discrimination or a disguised trade restriction, and may not impose restrictions greater than what is required for the objective;
- Personal information and consumer protection:
 - The importance of guidelines of relevant international bodies on personal information protection. TPP mentions that Parties may recognize each others regulatory outcomes;
 - Recognize the importance of international cooperation on consumer protection;
- Development concerns on e-commerce chapters
 - Include references to international cooperation, exchange of information, and participation in international (TISA) / regional and multilateral (TPP) fora;
 - TPP adds that the private sector is encouraged to self-regulate including codes of conduct, model contracts, guidelines and enforcement mechanisms.

CFTA Negotiations (1)

- African countries are aiming to conclude CFTA negotiations in 2017 covering trade in goods and services & further proceed to new issues (e.g., competition)
- UNCTAD cooperates with AUC/ECA in support of CFTA negotiations (e.g., SPRs for ECOWAS)
- Conducted in the CFTA Negotiating Forum supported by Technical Working Group and Continental Task Force. The 6th CFTA Negotiating Forum (June) adopted the modalities for tariff & services negotiations
- The Modalities for Services Negotiations adopted June 2017 outline the 3 main components of the services negotiations:
 - a framework services agreement,
 - schedules of specific commitment, and
 - a framework on regulatory cooperation
- AU Members have also agreed to:
 - design a work programme on services data development;
 - establish a CFTA Trade in Services database;
 - undertake an assessment and evaluation of all services sectors in the negotiations for individual countries in terms of market concentration and ownership; and
 - examine national experiences of African countries and identify trends in intra-Africa trade in services together with the opportunities and challenges



CFTA Negotiations (2)

- The last meeting of the NF (June 2017) determined that:
 - the preferred option for trade in services negotiations would be a hybrid approach incorporating the GATS approach and a broad framework for regulatory cooperation
 - the hybrid approach would incorporate recognition of the right of Member States to regulate and use a methodology that includes the positive list approach and request and offer by Member
 - the process of negotiations would incorporate services liberalisation over successive rounds
- As a basis for the negotiations, AU Member States will submit their offers and draft schedules, clearly identifying limitations in market access and national treatment in accordance with GATS schedules format
- It remains important for countries to ensure adequate information-sharing and consultations between delegates based in Addis Ababa and in Geneva and officials in capital so that the developments in the WTO are coherent with the CFTA negotiations



Regional cooperation (1) - Energy

Energy cooperation centred on cross-border infrastructure & supply

- **ASEAN** adopted the Plan of Action for Energy Cooperation 2010-2015 to harmonise regulations and technical specifications, enhance generation capacity, facilitate interconnection and cross-border trade, promote renewable energy and energy efficiency
- **China – ASEAN cooperative scheme** focus on power grid connectivity and power trading
- **MERCOSUR** focus on interconnection and transmission lines while the **Andean Community** focus on regulation with a view on the future interconnection system
- **Central America** focus on regional infrastructure for interconnection and transmission and towards a regional electricity market
- **SADC** seeks interconnection for cross-border transmission to implement the Protocol on Energy and increase energy access



Regional cooperation (2) - Transport

Transport cooperation on regional networks and cross-border connectivity

- **ASEAN Framework Agreement** on the Facilitation of Inter-State Transport expands market access, sets regional regulation and harmonises road transport requirements and mutual recognition of vehicle inspection certificates
- In **China – ASEAN cooperative scheme**, 6 member countries share costs of building infrastructure
- **Andean Community** develops regional initiatives on transport and trade facilitation, UNASUR focus on road infrastructure and border crossings
- **MERCOSUR** supports road and railroad infrastructure, Central America supports the development of road transport and connection
- **COMESA-EAC-SADC tripartite initiative** induces convergence of sub regional transport policies and institutions; Regional transport corridors in Africa are central and require quality logistics services and one-stop border posts



Regional cooperation (3) - Telecommunications

Telecommunication cooperation focus on interconnection, spectrum management and broadband infrastructure

- **ASEAN**, with the ICT Master Plan 2015, enhances cooperation on broadband, information security and ICT adoption by SME towards universal access
- **Andean Community** promotes integration of telecommunications including roaming services in border areas and broadband development
- **Mesoamerican Project** develops the Mesoamerican Information Highway, a technological platform to improve broadband connectivity
- **Africa** (New Partnership for Africa's Development e-Africa Programme) develops broadband infrastructure through existing and planned submarine and terrestrial cables



Conclusions

- Services RTAs become a salient feature of the ITS & driven by countries with competitive services export capacity
- RTA innovations had the effect of deeper and broader market opening and regulatory harmonization especially under North-South RTAs
- Innovative design in market opening and SDT is important for DCs to build competitive services, participate in GVC and strengthen regulatory and institutional capacity, including adjustment facility, for inclusive trade
- Need to assess how developing countries participation in RTAs can be coordinated with national regulations to maximize overall benefits
- Regional cooperation in services can facilitate intraregional trade and access to markets, and enhance regional infrastructure networks
- Regional liberalization and cooperation in ISS, coordinated with local policies and regulations, can contribute to "developmental integration"





Thank You.



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