

Zhang, Ruosi; Sasanabanchakul, Chuwankorn

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## Means of liberalization and beyond: Understanding scheduling approaches in services trade agreements

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**World Trade Organization**

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**MEANS OF LIBERALIZATION AND BEYOND: UNDERSTANDING SCHEDULING APPROACHES IN  
SERVICES TRADE AGREEMENTS**

Ruosi Zhang\* and Chuwankorn Sasanabanchakul†

*Trade in Services and Investment Division*

*World Trade Organization*

Manuscript date: 29 June 2022

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\* Counsellor of Trade in Services and Investment Division, WTO ([ruosi.zhang@wto.org](mailto:ruosi.zhang@wto.org)). This is a working paper, and hence it represents research in progress. The opinions expressed in this paper are those of its authors. They are not intended to represent the positions or opinions of the WTO or its Members and are without prejudice to Members' rights and obligations under the WTO. Any errors are attributable to the authors.

† Legal Affairs Officer of Trade in Services and Investment Division, WTO ([chuwankorn.sasanabanchakul@wto.org](mailto:chuwankorn.sasanabanchakul@wto.org)).

# MEANS OF LIBERALIZATION AND BEYOND: UNDERSTANDING SCHEDULING APPROACHES IN SERVICES TRADE AGREEMENTS

Ruosi Zhang\* and Chuwankorn Sasanabanchakul†

*Trade in Services and Investment Division  
World Trade Organization*

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## ABSTRACT

The scheduling approach constitutes a key element of services trade agreements as it is the means to pursue liberalization. This paper provides an overview of the scheduling approaches adopted in 187 trade agreements notified under GATS Article V as of 30 April 2022, analyses the differences between the positive and negative list approaches, and discusses their implications for negotiation strategies and trade policies. Theoretically, both positive and negative list approaches can achieve high level of liberalization as long as governments are willing to open market. We however note in this paper that the scheduling approach is not a stand-alone technique. Rather, it is associated with the design and legal structure of a services trade agreement as well as different core obligations. In addition, establishing a positive or a negative list usually entails different negotiation dynamics and internal consultation processes. With FTAs as important trade policy instruments fast evolving and deepening, governments are becoming more flexible and more "innovative" in their use of scheduling approaches, including creating different hybrid patterns to accommodate their sensitivities in certain sectors, supplementing the positive list with a standstill requirement, or allowing transition from the positive list to the negative list. Governments' practices in FTAs would be inspiring for future services trade negotiations, be it bilateral, plurilateral, or multilateral.

**Keywords:** Trade in services, scheduling approaches.

**JEL classification codes:** F15

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† Legal Affairs Officer of Trade in Services and Investment Division, WTO ([chuwankorn.sasanabanchakul@wto.org](mailto:chuwankorn.sasanabanchakul@wto.org)).

## Introduction

As of 30 April 2022, 187 free trade agreements have been notified under Article V (Economic Integration) of the General Agreement on Trade in Services (GATS), accounting for one third of all notified regional trade agreements in the WTO, involving 116 WTO Members (counting the EU-27 as one).<sup>1</sup> These agreements (hereafter "services FTAs" for the sake of simplicity) are diverse in terms of membership,<sup>2</sup> sectoral coverage, level of liberalization, and covered disciplines. Nevertheless, they also show a high degree of commonality in many aspects, such as the definition of trade in services; the concepts of market access, national treatment and domestic regulation; rules on telecommunications, financial services, and the movement of natural persons. One of the common features of services FTAs is the list of specific commitments whereby governments may adopt or maintain existing or future measures inconsistent with market access and national treatment obligations, and in some cases, certain other obligations. Different techniques have been used for the establishment of such list of specific commitments, so-called scheduling approaches, which are usually categorized into three types, namely the GATS-type positive list approach, the NAFTA<sup>3</sup>-type negative list approach, and the hybrid approach:

- Under the **positive list approach**, Parties to a services FTA list the sectors and sub-sectors in which specific commitments are undertaken. Market access and national treatment are granted only to those listed sectors and sub-sectors, and subject to limitations and conditions inscribed in the Schedule.
- Under the **negative list approach**, Parties list reservations (usually called "non-conforming measures") to core obligations contained in the agreement. These reservations typically feature in two lists (usually called "Annex I and Annex II") which include existing non-conforming measures and future non-conforming measures respectively. All measures and sectors within the scope of the agreement are presumably in conformity with the obligations except for the listed reservations.
- The **hybrid approach** is usually a combination of the above two approaches. There are no definite patterns of such combination. The Parties to a services FTA may agree on a pattern they consider to be the most suitable for scheduling purposes, for example, the negative list approach for the commitments on investment including services, and the positive list approach for the commitments on cross-border trade in services.

Since market access and national treatment commitments, to a large extent, reflect the level of liberalization achieved by a services FTA, the techniques to list specific commitments are usually considered as means or modalities of liberalization. Some are of the view that the choice of scheduling approach is a mere technicality and what matters is a government's willingness to commit to open services markets.<sup>4</sup> According to this view, governments can advance liberalization and enhance the credibility and transparency of the trading regime under either positive listing and negative listing. This is theoretically true, but it may not explain the reasons for governments' choices of scheduling approach in FTAs. A conventional perception is that most developing economies traditionally choose to undertake commitments based on the positive list approach, while the negative list approach is dominantly used by developed economies. But the picture is more complicated than that. The level of economic development is not necessarily associated with the choice of scheduling approach and various factors may be taken into consideration in governments' choice. Recent years have also seen more and more variations of the two "classic" approaches emerging in services FTAs.

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<sup>1</sup> WTO RTA database <http://rtais.wto.org/UI/PublicSearchByCrResult.aspx> Different titles have been used for agreements notified under GATS Article V:7, such as free trade agreements (FTAs), economic partnership agreements (EPAs), economic integration agreements (EIAs), or others. In this paper, for the sake of simplicity, the acronym FTA is used to refer to any agreement notified under GATS Article V:7.

<sup>2</sup> Developed countries are party to around 59 per cent of all RTAs featuring services provisions. North-South agreements, with both developed and developing countries as Members, account for around 51 per cent of such RTAs, and North-North agreements among developed countries, for around 8 per cent. Services-related South-South RTAs have grown noticeably in number and today account for around 41 per cent of notified agreements.

<sup>3</sup> The North American Free Trade Agreement (NAFTA) was implemented in 1994 for trade between the U.S., Mexico, and Canada.

<sup>4</sup> Carsten Fink and Martin Molinuevo, "Eastern Asian Free Trade Agreements in Services: Key Architectural Elements", *Journal of International Economic Law* 11 (2), 2008, p. 310.

In our view, the scheduling approach is not simply about choosing a certain form or format to list specific commitments. It is an essential part of the legal structure of a services FTA, usually a key indicator of the design of the agreement and needs to be considered as and examined together with relevant obligations therein. Notably, the operation of different scheduling approaches may entail different dynamics of negotiations and internal consultations. With this mind, by undertaking a comprehensive examination of the scheduling approaches in services FTAs, this paper intends to address the following questions:

1. To what extent do the various scheduling approaches differ? Do the observed differences matter?
2. What are the design and substance of the disciplines usually associated with different scheduling approaches?
3. To what extent do the different features of scheduling approaches lead to different levels of liberalization achieved in services FTAs?
4. How and to what extent can scheduling approaches inform policy makers and negotiators in their decision-making related to services FTAs?

This paper is structured as follows: Section 1 provides an overview of the scheduling approaches applied in services FTAs; Section 2 analyses the operation of different scheduling approaches in relation to substantive obligations; Section 3 discusses implications of different scheduling approaches for negotiation strategies and trade policies.

## 1 Overview of Scheduling Approaches in Services FTAs

The scheduling approach constitutes a key element of a services FTA as it is the means to pursue liberalization. Out of the 187 services FTAs examined in this paper, 67 agreements followed the GATS-type positive list approach (hereafter "positive list FTAs") for commitments on trade in services, which involve 73 economies; 82 agreements adopted the negative list approach (hereafter "negative list FTAs") which cover 40 economies; and 20 agreements took the hybrid listing approach (hereafter "hybrid list FTAs") with 24 economies involved.<sup>5</sup>

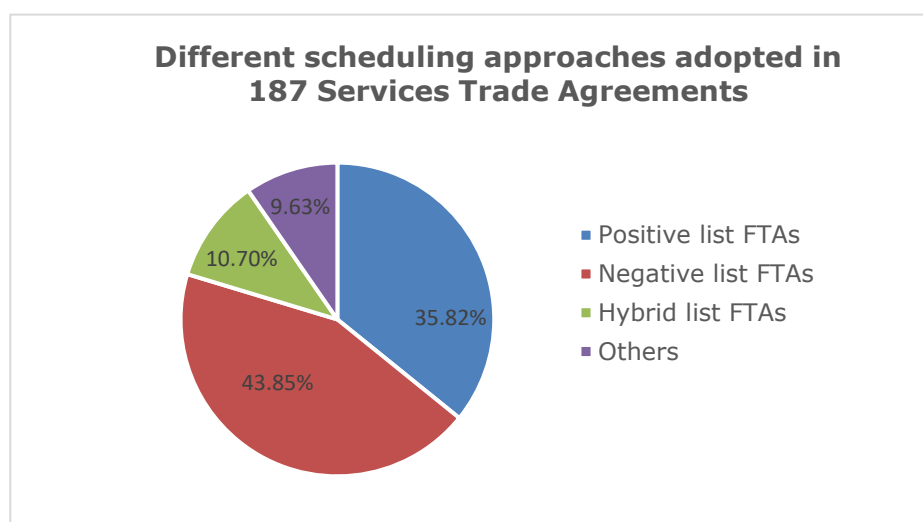


Figure 1 demonstrates the percentages of different scheduling approaches adopted in 187 Services Trade Agreement notified to the WTO under Article V (Economic Integration) of the General Agreement on Trade in Services (GATS) until 30 April 2022.

Our examination confirms the usual perception that the GATS-type **positive list approach** has been the choice of most developing economies in services FTAs, as technically it presents few scheduling challenges and would allow governments to build upon their GATS commitments in a straightforward

<sup>5</sup> Some regional trade agreements notified under Article V:7 of the GATS (e.g., the European Union, the European Economic Area, the Eurasian Economic Union, CARICOM, GUAM, etc.) are aimed at establishing a single services market through regulatory harmonization, for which the scheduling approaches considered in this paper are less relevant.

manner. In particular, developing economies in Asia<sup>6</sup>, Caribbean<sup>7</sup>, Middle East<sup>8</sup> and some transitional economies in Europe<sup>9</sup> tend to follow this approach in most cases.

The **negative list approach** initially appeared in the Protocol on Trade in Services to the *Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)* which entered into force on 1 January 1989. But it was with the entry into force of the *North American Free Trade Agreement (NAFTA)* in 1994 that the negative list approach became an influential liberalization modality. Following the example of NAFTA, more and more FTAs adopted the negative list approach, especially those involving developed economies such as the United States, Canada, Australia, and Japan. Out of the 83 negative list FTAs examined in the paper, 44 involve at least one developed economy and 38 are concluded between developing economies.

The choice of scheduling approach appears to have become part of an economy's "negotiating tradition" in services FTAs. For example, developing economies in Americas,<sup>10</sup> apparently under the influence of the NAFTA, constantly follow the negative list approach in FTAs not only with developed economies, but also among themselves. There are 37 negative list FTAs concluded between economies in the Americas, 65 negative list FTAs involving at least one American economy, but only 17 negative list FTAs were concluded between economies in Asia, Europe, and the Pacific. This may also explain an interesting fact that out of the 76 FTAs concluded between developing economies and examined in this paper, the number of the negative FTAs (38) is much higher than that of the positive list FTAs (29), despite that most developing economies traditionally choose the positive list in FTA negotiations. On the other hand, the European Union tends to choose the positive list approach in most of its FTAs concluded with developing economies and the negative list approach in its FTAs with developed economies (e.g., Canada, Japan, and the United Kingdom).<sup>11</sup> In contrast, for the European Free Trade Association (EFTA, consisting of Iceland, Norway, Switzerland, and Liechtenstein), the positive list is apparently the dominant approach to pursuing services liberalization in FTAs. (More details in Section III)

Another observation is that the choice of scheduling approach may sometimes be subject to the influence of trading partners in FTA negotiations, in particular those "powerful" partners. For example, when concluding agreements with developed economies, some developing economies in Asia, Africa and Middle East have shifted from their traditional position on scheduling to take the negative list approach. This is the case, for instance, for Singapore, Republic of Korea, Morocco, Kingdom of Bahrain, and Oman in their respective FTAs with the United States. It is also interesting to note that when an economy has made that shift and negotiated a negative list FTA, it usually seeks to adopt the negative list in its subsequent FTAs. Examples in this regard include some recent FTAs negotiated by Asian economies (e.g., Singapore; Republic of Korea; Hong Kong, China; and Viet Nam). (Please see Annex 2)

It is worth noting that some recent mega-FTAs such as the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)* and the *Regional Comprehensive Economic Partnership (RCEP)* have adopted the negative list approach. Further, the RCEP provides for the possibility of transition from the "Schedules of Specific Commitments" (namely positively listed

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<sup>6</sup> The developing economies in Asia include Armenia, Brunei Darussalam, Cambodia, China, India, Indonesia, Jordan, Republic of Korea, Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam.

<sup>7</sup> The developing economies in Caribbean include Antigua & Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Haiti, Montserrat, Saint Kitts & Nevis, Saint Lucia, Saint Vincent & the Grenadines, Suriname, and Trinidad & Tobago.

<sup>8</sup> The developing economies in Middle East include Kingdom of Saudi Arabia, the State of Kuwait, the United Arab Emirates, Qatar, Kingdom of Bahrain, and Oman.

<sup>9</sup> The transitional economies in Europe include Albania, Georgia, Bosnia and Herzegovina, Republic of Moldova, Montenegro, and Ukraine.

<sup>10</sup> The developing economies in Americas include Chile, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Panama, Peru, Nicaragua, and Uruguay.

<sup>11</sup> Since its separation from the single market of the European Union, the United Kingdom has had to stabilize its trade relations with other economies mainly by duplicating the FTAs previously concluded by the European Union. As a result, the United Kingdom FTAs mainly follows the approaches adopted in the agreements previously concluded by the European Union. On the other hand, the European Union-United Kingdom Trade and Cooperation Agreement which defines the trade relationship between the two parties after Brexit adopts the negative list approach to services commitments.

commitments) to the "Reservation Lists" (namely negatively listed commitments).<sup>12</sup> (More details in Section III)

The dichotomy between the positive list approach and the negative list approach may be sometimes too rigid to meet delicate policy and regulatory considerations underlying FTAs. Recent years have seen important evolution in FTAs whereby some governments seek to deviate from the "standard" GATS-type or NAFTA-type list approach with a view to accommodating various policy and regulatory needs. As a result, there emerged a variety of scheduling formats combining both the positive and negative lists in one agreement, collectively known as the **"hybrid" approach**. Of the 187 agreements reviewed in this paper, 20 adopted this approach to scheduling services commitments,<sup>13</sup> most of which are FTAs between developed and developing economies, for example the FTAs between Japan and several Asian economies. A few FTAs between developing economies (e.g., *South Korea – India FTA*, *Pakistan – Malaysia FTA*) also took this approach. (Please see Table 1)

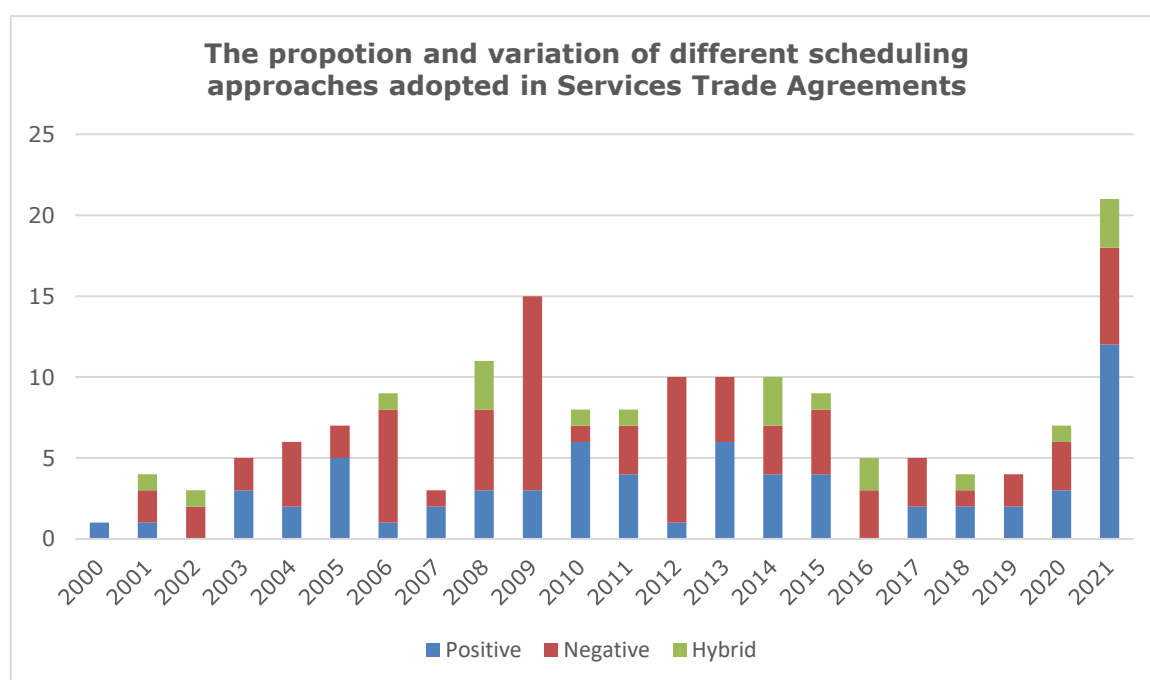


Figure 2 shows the number of services trade agreements entering into force each year over the period of 22 years from 2000 to 2021 and the proportion and variation of scheduling approaches adopted in those agreements.

There are various patterns under the umbrella of the hybrid list approach. The most common pattern is that for all the Parties to an agreement, the positive list approach is the basis for commitments on cross-border trade in services while commitments on investment (in both goods and services) are subject to the negative list approach. These agreements typically have two separate Annexes respectively for cross-border trade in services and investment liberalization.

Another pattern is where the Parties to an agreement do not follow the same list approach but choose different liberalization modalities. For example, in the *Australia – China FTA*, Australia's commitments on cross-border trade in services and investment were undertaken on a negative list basis, whereas China drew a positive list for its commitments under the services chapter including mode 3 (commercial presence) and defers its commitments under the investment chapter to a 'Future Work Program'.<sup>14</sup> As a matter of fact, the positive list approach is China's traditional

<sup>12</sup> See Article 8.12 "Transition" of Regional Comprehensive Economic Partnership (RCEP) and Article 12 "Transition to Schedules of Non-Conforming Measures" of ASEAN Trade in Services Agreement (ATISA).

<sup>13</sup> Some FTAs contain a positive list for services commitments under the four modes of services and a negative list for investment excluding services. These agreements are counted as positive list FTAs.

<sup>14</sup> See Article 9.9 "Future Work Programme" of the *China–Australia FTA*.

liberalization modality in FTAs.<sup>15</sup> With its decision to join the *CPTPP* which requires its Parties to schedule commitments trade in services and investment on a negative list basis, China is presumably becoming more willing to deviate from its negotiating tradition and embark on the negative list approach.

The hybrid list approach is sometimes used to accommodate commitments in financial services, a sector many governments tend to take a cautious path for liberalization. For example, under *Singapore-South Korea FTA*, while both Parties' commitments on cross-border trade in services and investment are listed on a negative list basis, their commitments on financial services are scheduled in a GATS-type positive list and under the four modes of supply.

There exist some other variations with respect to the hybrid approach. In the *Peru - Mexico FTA*, both Parties chose to follow the negative list approach in scheduling their commitments for the main obligations in the agreement except for market access on cross-border trade in services. In addition to the commitments in Annex I (existing non-conforming measures) and Annex II (future non-conforming measures), market access commitments on cross-border trade in services, contained in a separate annex, are scheduled in a positive list. In the *Australia - Indonesia Comprehensive Economic Partnership Agreement*, Australia included in its Annex II (future non-conforming measures) a table of market access commitments at the regional (state and territory) level based on the positive list approach, while Indonesia's reservation for future non-conforming measures in Annex II contains a positive list of "*the specific sectors, sub-sectors or activities for which Indonesia makes commitments subject to terms, limitations, conditions, and qualifications on market access, national treatment and local presence*".

Some negative list FTAs refer to GATS schedules of commitments in reservation lists. For example, in the *CPTPP*, four out of eleven economies (Australia, Canada, New Zealand, and Viet Nam) made a reference to their GATS schedules of commitments and included improved GATS commitments based on the positive list. In addition, Mexico, similar to what it did under *USMCA*, included a positive list of sectors and sub-sectors for liberalization. Chile and Peru followed a similar pattern in the *CPTPP*. These examples suggest that governments tend to be more flexible in choosing scheduling approaches as they seek to find the most suitable way for liberalization in FTAs.

Given policy sensitivities associated with the supply of services through the presence of natural persons (mode 4), negative list FTAs usually contain a separate annex consisting of the schedules of specific commitments on the temporary movement of natural persons – "mode 4 schedules". Mode 4 schedules set out the terms and conditions for the entry and duration of stay of specified categories of natural persons. These schedules are in line with the spirit of the positive list approach as there are no commitments on the categories of natural persons that are not listed in the schedule. For the sake of clarity, these FTAs are not counted as "hybrid list FTAs" in this paper.

The *RCEP* is notably innovative in making use of different scheduling approaches due to the high level of diversity in membership. As its 15 signatories comprise of a mix of high-, middle- and low-income countries with different "scheduling traditions", the Agreement incorporates a complex scheduling mechanism. While all the 15 signatories have committed to establishing the negative list ultimately for both trade in services and investment, they may achieve this goal progressively:

- First, for commitments on trade in services, Parties are allowed to choose either a positive list ("Schedules of Specific Commitments") or a negative list ("Schedules of Reservations and Non-conforming Measures") (Article 8.3:1).
- Second, all Parties' commitments on investment are scheduled in a negative list (Article 10.8).
- Third, all Parties' commitments on the temporary movement of natural persons are scheduled in a positive list which consists of committed categories of natural persons (Article 9.5).
- Fourth, it sets out a transition mechanism for the Schedules of Specific Commitments to be transformed into the Schedules of Reservations and Non-conforming Measures (Article 8.12).
- Fifth, more flexibilities for LDCs in the scheduling of commitments. LDCs are not obliged to make commitments under the provisions on MFN and transparency (Article 8.3:4), nor to identify sectors or subsectors for future liberalization (Article 8.7:5). LDCs are given more time to transition from the positive list (i.e., "Schedules of Specific Commitments") to the

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<sup>15</sup> Except the two agreements China concluded with Hong Kong, China and Macao, China.



negative list (i.e., "Schedules of Reservations and Non-conforming Measures") (Article 8.12:1).

The table below demonstrates different patterns of the hybrid approach found in FTAs

Table 1: Illustration of the hybrid approach

A variety of the hybrid approach		
Pattern	FTAs	Date of EIF
Different approaches adopted to liberalize Cross-Border Trade in Services and Investment (covering services) – Positive: Cross-bord trade in services or Trade in services Negative: Investment ( <i>including</i> services)	EU - Armenia	01-Jun-2018
	EU - Georgia	01-Sep-2014
	EU - Moldova, Republic of	01-Sep-2014
	EU - Ukraine	23-Apr-2014
	EAEU - Viet Nam	05-Oct-2016
	Japan - Brunei Darussalam	31-Jul-2008
	Japan - India	01-Aug-2011
	Japan - Malaysia	13-Jul-2006
	Japan - Indonesia	01-Jul-2008
	Japan - Mongolia	07-Jun-2016
	Japan – The Philippines	11-Dec-2008
	Japan – Singapore	30-Nov-2002
	Korea – India	01-Jan-2010
	New Zealand - Singapore	01-Jan-2001
	Pakistan – Malaysia	01-Jan-2008
Different approaches adopted to liberalize Trade in Services and Investment (excluding services) - Positive: Trade in Services; Negative: Investment ( <i>excluding</i> services) <sup>16</sup>	Georgia - Hong Kong, China	13-Feb-2019
	EFTA - Central America	19-Aug-2014
	EFTA – Chile	01-Dec-2004
	EFTA – Colombia	01-Jul-2011
	EFTA – Georgia	01-Sep-2017
	EFTA – Singapore	01-Jan-2003
	EFTA – Ukraine	01-Jun-2012
	India – Malaysia	01-Jul-2011
Different approaches adopted among Parties in liberalizing both Trade in Services and Investment	Australia - China Australia - Indonesia	20-Dec-2015 05-Jul-2020
Different approaches adopted in liberalizing financial services	Republic of Korea - Singapore Australia – Hong Kong, China	02-Mar-2006 17-Jan-2020
Different approaches adopted in commitments under different core obligations (Positive: market access; Negative: others)	Peru – Mexico	01-Feb-2012
Positive list as a transition to negative list	RCEP	01-Jan-2022

As alluded above, some economies chose different list approaches in different FTAs depending on trading partners. In other words, the list approach itself is part of the negotiating outcome. For example, Australia is the pioneer in using the negative list as the liberalization modality for trade in

<sup>16</sup> This group of agreements are counted as positive list FTAs in this paper as the focus is on scheduling approaches to trade in services commitments.

services. Out of the 15 FTAs concluded by Australia, only 3 FTAs took the positive list approach, namely the agreements with the ASEAN, Malaysia, Thailand; another 3 bilateral FTAs adopted the hybrid approach with the positive list element, which are the agreements respectively with China; Hong Kong, China; and Indonesia. The experiences of the European Union and Japan also suggest that the choice of a listing approach usually depends on FTA objectives and may vary with trading partners. (See Section III)

The negative list approach appeared to gain certain popularity in the past one or two decades. For instance, the services chapter of early EU trade agreements closely followed the GATS structure and provisions including the scheduling approach. The *2001 EU-Mexico Global Agreement* and the *2002 EU-Chile Association Agreement* adopted the GATS-type positive list approach. Without setting standstill as benchmark, these two agreements were aimed at reciprocal liberalization of trade in services on the basis of the principle of non-discrimination in conformity with Article V of the GATS. It is interesting to note that as the EU attempted to modernize its early trade agreements, one of the "modernization" efforts was to shift from the positive list to the negative list for services and investment commitments. On 21 April 2018, the EU and Mexico reached a modernised agreement which will replace the previous *EU-Mexico Global Agreement* once in force. The new EU-Mexico trade agreement adopted the NAFTA-type structure whereby trade in services would be treated respectively under the chapters on cross-border trade in services (modes 1 & 2), investment (mode 3) and movement of business persons (mode 4), and the schedule of specific commitments would be replaced with the list of reservations (existing and future non-conforming measures). As the EU and Chile started the negotiation process for the modernisation of the *EU – Chile Association Agreement* in 2017, one of the EU's modernization proposals was to adopt the same NAFTA-type structure for trade in services and investment.<sup>17</sup>

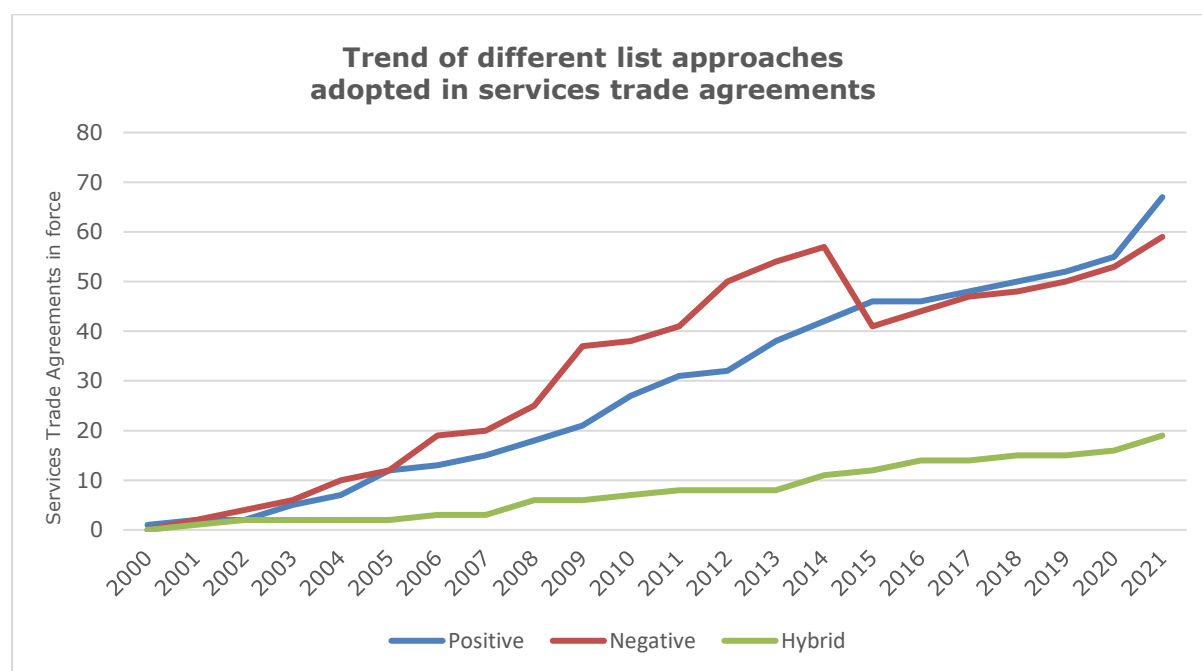


Figure 3 shows the trend of three different listing approaches adopted in services trade agreement over the period of 11 years from 2000 to 2021.

The above overview allows us to make a number of interesting findings with respect to scheduling approaches in services FTAs:

- The choice of scheduling approach in services FTAs appears to have become a "negotiating tradition". The negative list is the traditional approach for most American economies just as the positive list for developing economies in Asia.

<sup>17</sup> The EU proposal for an Investment and Trade in Services Title in the Trade Part of a possible modernised EU-Chile Association Agreement ([https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc\\_156589.pdf](https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156589.pdf)).

- The negative list approach is traditionally preferred by many developed economies, but it appears becoming a trend for developing economies in Asia in recent years.
- The scheduling approach is part of FTA negotiations; governments may sometimes choose different approaches in different FTAs, depending on trading partners and objectives.
- Recent years have seen deviations from the standard GATS-type or NAFTA-type list to accommodate various policy and regulatory considerations. With FTAs as policy instruments fast evolving and deepening, governments are becoming more flexible and more "innovative" in their use of scheduling approaches, including creating different hybrid patterns.

## 2 Scheduling Approaches in Operation: To What Extent Do They Differ?

Scheduling approaches are means to pursue market opening in services FTAs, usually on a reciprocal basis. The positive and negative lists are built upon different logics with different designs and thus operate differently. The operation of scheduling approaches should be considered together with the legal structure of and the substantive provisions in relevant agreements. This section puts the positive and negative lists into perspective to highlight the differences between them in terms of starting point, structure, sectoral coverage, benchmarks, and transparency.

### *Starting point: different assumptions*

The positive list approach is usually described as "bottom-up": the bottom line is that only those service sectors listed in the schedule are subject to market access and national treatment obligations; there are no market access and national treatment commitments for those unlisted sectors. The underlying assumption is that commitments resulting from negotiations correspond to a certain stage of liberalization and that the Parties to the agreement would pursue further negotiations in the future with a view to progressively increasing the level of liberalization by improving existing commitments. Therefore, a mechanism to implement progressive liberalization and guarantee further negotiations needs to be in place together with the positive list, otherwise the level of commitments may stay at the "bottom" and cannot be moved "up". This is why GATS Article XIX provides that "*Member shall enter into successive rounds of negotiations, ... with a view to achieving a progressively higher level of liberalization*".<sup>18</sup> In the same token, some positive list FTAs contain provisions whereby the Parties agree to review commitments and/or hold further negotiations with a view to improving existing commitments, similar to the built-in agenda under the GATS. For example, in the *Australia-Thailand FTA*, one of the few positive list FTAs Australia concluded, Part V is titled "Progressive Liberalization and Development of Rules" and the Parties agree to "*enter into further negotiations on trade in services within three years from the date of entry into force of this Agreement with the aim of enhancing the overall commitments undertaken by the Parties under this Agreement*" (Article 812). In the *Australia-Malaysia FTA*, Article 8.16 states: "*The Parties shall review commitments on trade in services with the first review within three years from the date of entry into force of this Agreement, and at least every five years subsequently, with the aim of improving the overall commitments undertaken by the Parties under this Agreement on a mutually advantageous basis.*"

Conversely, the negative list approach is "top-down" whereby any measures affecting trade in services shall conform to market access, national treatment and some other substantive obligations except for those listed in the schedule as "non-conforming" measures. The underlying assumption is that all services sectors are subject to full liberalization unless reservations are made in accordance with the agreement. Accordingly, the negotiation of a negative list FTA is *in principle* "once-and-for-all" and aimed at the highest level of achievable liberalization. Under the negative list approach, there are usually two lists of non-conforming measures, one comprising of the existing measures ("Annex I measures") which are inconsistent with market access, national treatment and some other obligations, the other containing the reservations for future measures ("Annex II measure").<sup>19</sup> Through the list of existing non-conforming measures, the Parties to the agreement agree to bind the *status quo* of services regulatory regimes and are committed not to rolling back. In addition, in order to achieve the highest level of liberalization between the Parties, negative list FTAs usually

<sup>18</sup> Despite GATS Article XIX, WTO Members have yet to complete the first round of negotiations under the GATS 27 years after its entry into force. Consequently, GATS commitments fall far short of the level of the applied regime in most economies and cannot play the role as they are supposed to, i.e., to ensure the transparency and predictability of trading conditions.

<sup>19</sup> Some negative list FTAs contain additional annexes for parties to list non-conforming measures in certain sectors (e.g., financial services) or for certain matters (e.g., state-owned enterprises).

contains typical provisions to automatically lock in future unilateral liberalization (so-called "ratchet").<sup>20</sup>

That said, the liberalization level achieved in an FTA is determined by the outcome of negotiations, not the assumption. As a matter of fact, many negative list FTAs provide for future reviews of the non-conforming measures and reservations with a view to possible improvements.<sup>21</sup> For example, the *EU-UK TCA* states that "*the Parties shall endeavour, where appropriate, to review the non-conforming measures and reservations ... with a view to agreeing to possible improvements in their mutual interest*" (Article 126 "Review"). What is more interesting is the case of NAFTA which contains no provisions on review or foresees no future improvement of commitments. Nevertheless, following the US notification of its intention to initiate negotiations with Canada and Mexico regarding the modernization of NAFTA, the three Parties held seven rounds of negotiations in 2017-2018 and concluded a new FTA, namely USMCA, which entered into force on 1 July 2020 and replaced NAFTA.

It is interesting to note that hybrid list FTAs seek to achieve certain compromise between the "bottom-up" and "top-down" assumptions. As noted above, in the *Australia-China FTA*, Australia's commitments are based on a negative list, while China's commitments are scheduled in a positive list. As a result, the Agreement sets up a mechanism to implement the progressive liberalization of trade in services. It provides: "*The Parties shall consult within two years of the date of entry into force of this Agreement and every two years thereafter, or as otherwise agreed, to review the implementation of this Chapter (Trade in Services) and consider other trade in services issues of mutual interest, with a view to the progressive liberalisation of the trade in services between them on a mutually advantageous basis.*" (Article 8.24:1) The Agreement does not contain "ratchet" provisions to automatically lock in future unilateral liberalization. Rather, it establishes a mechanism to incorporate future unilateral liberalization through consultations and amendment of schedules.<sup>22</sup> Moreover, the Agreement requires the Parties to "*initiate next round of the negotiation on trade in services in the form of negative list approach and conclude such negotiation as soon as they could*".<sup>23</sup> In terms of investment, the *Australia-China FTA* sets up "Future Work Programme" which foresees future negotiations including *inter alia* "*scheduling of investment commitments by China on a negative list basis*" (Article 9.9:3). The example of the *Australia-China FTA* confirms the common understanding that basically, the negative list approach is the modality to achieve higher levels of liberalization for trade in services while the positive list approach is more suitable for a progressive liberalization.

Similarly, in the framework of the *Australia-Indonesia FTA* where Indonesia's commitments on future non-conforming measures on trade in services were scheduled in a positive list, the Parties agreed to "*review the Chapter (on trade in services) and related Annexes and Schedules within three years of the date of entry into force of this Agreement with a view to substantially reducing or eliminating discrimination and enhancing market access between the Parties with regard to trade in services*" and complete "*the initial review, including actions to incorporate the results into this Agreement*" "*within two years of initiating the review*" (Article 9.13:1). The Parties also agreed to hold reviews every five years thereafter (Article 9.13:2). In the RCEP where the Parties may choose either the positive list or the negative list to schedule commitments, they agreed to "*review the commitments on trade in services as necessary, but no later than the general review of this Agreement under*

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<sup>20</sup> A typical "ratchet" provision states: "an amendment to any non-conforming measure referred to in ..., to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles xx (market access), xx (national treatment), xx (most favoured nation treatment) and ...."

<sup>21</sup> The first negative list FTA, ANECERTA, does not contain standstill and ratchet mechanisms. It, however, foresees future liberalization of trade in services through review and incorporation of unilateral liberalization (Article 10 of the Protocol on Trade on Services). Since its entry into force in 1989, the Annex to the Protocol on Trade in Services which lists the two Parties' reservations on market access and national treatment has been updated four times (respectively in 1992, 1995, 1999 and 2015).

<sup>22</sup> Article 8.24:2 of the *Australia-China FTA* states: "Where a Party unilaterally liberalises a measure affecting market access of a service supplier or suppliers of the other Party, the other Party may request consultations to discuss the measure. Following such consultations, if the Parties agree to incorporate the liberalised measure into the Agreement as a new commitment, the relevant Schedule in Annex III shall be amended."

<sup>23</sup> Article 8.24:3 of the *Australia-China FTA* states: "After the entry into force of this agreement, at a time to be mutually agreed by the Parties, the Parties shall initiate next round of the negotiation on trade in services in the form of negative list approach, and conclude such negotiation as soon as they could."

Article 20.8 (General Review), with a view to further improving commitments under this Chapter so as to progressively liberalise trade in services among the Parties".<sup>24</sup>

### Design and legal structure

In services FTAs, the positive and negative list approaches are usually associated with different designs and legal structures as well as different core obligations subject to scheduling. The table below provides an overview of such differences.

Table 2: Design and legal structure of positive list and negative list FTAs

	Positive list FTAs	Negative list FTAs
How trade in services is addressed	<p><u>Mostly GATS-type</u>: the trade in services chapter covers four modes of supply;</p> <p>Occasionally: trade in services is covered in the chapters on cross-border trade in services (modes 1&amp;2), investment or establishment (mode 3), and presence of business persons (mode 4)</p>	<p><u>Mostly NAFTA-type</u>: trade in services is covered in the chapters on cross-border trade in services (modes 1&amp;2), investment (mode 3), and temporary entry of business persons (mode 4);</p> <p>Occasionally: the trade in services chapter covers four modes of supply; the investment chapter may cover or exclude services.</p>
Key obligations subject to scheduling	<p>Market access and national treatment</p> <p>Local presence (occasionally)</p>	<p>Market access</p> <p>National treatment</p> <p>Most-favoured-nation treatment</p> <p>Local presence</p> <p>Performance requirements</p> <p>Senior management and boards of directors</p>
Standstill and ratchet	Usually no; occasionally, yes	Yes
Sectoral rules	Annexes or chapters on telecommunications, financial services and sometimes other sectors such as maritime transport	Annexes or chapters on telecommunications, financial services and sometimes other sectors such as express delivery, professional services or road transport.
Future reviews	Yes	Yes
Annex on commitments	Schedules of specific commitments	<p>Lists of reservations:</p> <p>Annex 1: non-conforming existing measures</p> <p>Annex 2: non-conforming future measures</p> <p>Occasionally: Annex of commitments on financial services; Annex of commitments of temporary entry of business persons</p>

<sup>24</sup> Article 8.24 of the RCEP. Article 20.8 (General Review) provides: "The Parties shall undertake a general review of this Agreement with a view to updating and enhancing this Agreement to ensure that this Agreement remains relevant to the trade and investment issues and challenges confronting the Parties, five years after the date of entry into force of this Agreement, and every five years thereafter, unless the Parties agree otherwise."

### *Scope of application, sectoral coverage and the issue of "new services"*

The GATS has a broad scope of application as it applies to any measure affecting trade in services. The carve-outs of the GATS include the services supplied in the exercise of governmental authority, measures affecting traffic rights or services directly related to the exercise of traffic rights, and measures affecting natural persons seeking access to employment market or regarding citizenship, residence or employment on a permanent basis.<sup>25</sup> These carve-outs are usually duplicate in services FTAs. However, there are more carve-outs from the scope of some FTAs than that of the GATS, in particular negative list FTAs. For example, most negative list FTAs do not apply to subsidies. Under some negative list FTAs, Parties agreed to carve out each other's sensitive sectors from the application scope of the agreement. For example, the *Canada-EU Comprehensive Economic and Trade Agreement (CETA)* does not apply to audiovisual services for the European Union and culture industries for Canada.<sup>26</sup> Such carve-outs usually do not appear in positive list FTAs where core obligations (namely market access and national treatment) apply only to those sectors listed in the schedule. In other words, under positive list FTAs, governments have more flexibility to exclude those sectors/subsectors deemed to be sensitive and not ready for binding or liberalization, but these sectors/subsectors are subject to other obligations in the agreement (e.g., domestic regulation, transparency, etc.).

Under the positive list approach, since the sectoral coverage defines the scope of commitments, it is highly important to clearly describe the sectors and subsectors inscribed in the schedule. While the positive list approach provides governments with flexibility to select sectors and subsectors to accommodate strategic priorities and policy considerations, it requires that services classification systems be up to date to facilitate market access negotiations and the scheduling of commitments. So far, almost all positive list FTAs have followed the practice under the GATS and used the Services Sectoral Classification List (W/120) and the UN Central Product Classification (CPC) of 1991 to describe the sectoral coverage of commitments in the schedule.

With respect to the negative list approach, since what matters in the schedule is the listed measures rather than the services concerned, how services are classified or described has become less important, especially for existing non-conforming measures. For future non-conforming measures, given that many reservations are made on the sectoral basis, the definition of sectoral coverage remains important otherwise there would be too much uncertainty with respect to the scope of reservation. It is out of this consideration that the UN CPC and sometimes other classification have been used to annotate the sectors where reservations for future measures are made in negative list FTAs.

What is interesting is how so-called "**new services**" have been treated in many negative list FTAs. The negative list approach assumes that all service sectors are to be liberalized unless reservations are made. In other words, the substantive obligations would apply to all measures affecting trade in services except the existing and future non-forming measures listed as reservations in the schedule. In this context, some governments are concerned that unintended commitments may be undertaken with respect to services that have yet to be understood or foreseen by regulators. This is understandable as fast-growing digital technologies have enabled trade in many services that were not tradable previously and generated innovative business models or transactions means. In the view of these governments, certain regulatory discretion would be needed for those services they may not be able to categorize or foresee at the time of undertaking FTA commitments. Such concerns about "future uncertainty" led some governments to carve out so-called "new services" in their FTAs which are usually on a negative list basis.

It is also interesting to note that "new services" were treated in different manners in those FTAs. Under the *Canada-EU CETA*, "new services" are understood as "services that cannot be classified in CPC 1991" and the Parties agreed that the obligations on market access, national treatment, MFN

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<sup>25</sup> GATS Article 1:3(b), Annex on Air Transport Services, and Annex on Movement of Natural Persons Supplying Services under the GATS.

<sup>26</sup> Interestingly, in the *Canada-Republic of Korea FTA*, "culture industries" are treated as an "exception": "This Agreement is not to be construed to apply to measures adopted or maintained by either Party with respect to cultural industries except as specifically provided in Articles 1.6 (Cultural Cooperation) and 2.3 (Tariff Elimination)." (Article 22.6). Despite this exception, the Republic of Korea has made reservations as future non-conforming measures on audiovisual and entertainment services which apparently pertain to culture industries.

and domestic regulation would not apply to "new services", but they would be open to negotiation to incorporate "new services" into the scope of the Agreement (Annex 9-B); the Parties also clarified that the "new services carve out" does not apply to an existing service that could be classified in the CPC 1991, but could not previously be supplied on a cross-border basis due to lack of technical feasibility" (Annex 9-B:4).

Under the *Japan-Mexico EPA*, both Parties made a sweeping reservation: non-application of national treatment, MFN and local presence obligations to new services in all sectors. According to Japan and Mexico, "new services" refer to those services that were not recognised, at the time of entry into force of the Agreement by the governments of the Parties, and here, "not recognized" means neither positively nor explicitly classified in the CPC or national industrial classification. Japan repeated this reservation in its other FTAs.

In the *Japan-Switzerland EPA*, Switzerland also included a reservation on market access and national treatment for services not mentioned explicitly in the CPC, but not including those services deemed to be subsumed under "not elsewhere classified (n.e.c)" or under any type of residual formulation. Further, Switzerland made a reservation specifically on "new services" in various sectors including computer, advertising, telecommunication, audiovisual, entertainment, recreational and internet-based services.<sup>27</sup> Switzerland indicated that it reserves the right to adopt any measures in respect of "new services". However, in respect of commercial presence, Switzerland shall grant national treatment for its restrictive measures on new services, but as regards cross-border trade, Switzerland reserves the right to introduce any new discriminatory measures. According to Switzerland, "new services" means services that are not currently delivered on the Swiss market; it includes services related to existing or new products or the manner in which a product or service is supplied.

The *Singapore-Panama FTA* is one step further with a particular provision on "New Services" in the chapter on Cross-Border Trade in Services which recognizes each Party's right "to impose any conditions on the supply of any new service by services suppliers of the other Party" (Article 10.8). Such right is subject to certain limits: "(a) such conditions are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade in services; and (b) in seeking such review and imposing such conditions, the Party shall ensure that there is an overall balance of services commitments undertaken by each Party under this Agreement." This provision defines "new services" as "a service that at the date of entry into force of this Agreement is: (a) not currently in existence in the territory of a Party; or (b) an existing service not covered or defined in the United Nations Central Product Classification ("CPC"), and which is not subject to any regulatory framework in the territory of a Party owing to its infant stage of development as the Party concerned considers it to be as such."

Table 3: Examples of "new services" carve-out or reservation in FTAs

FTAs with "new services" carve-out or reservation		
FTA	Scheduling approach	How "new services" are treated
Canada – EU	Negative	For cross-border trade in services, market access, national treatment, MFN and domestic regulation do not apply to new services that cannot be classified in CPC 1991, but the Parties shall notify to each other measures inconsistent with the above obligations with respect to new services and enter into negotiation to incorporate new services into the scope of the Agreement.
Japan - Chile	Negative	

<sup>27</sup> Switzerland has listed the services as follows: CPC 7524 Programme transmission services (limited to new audiovisual services) CPC 75300 Radio and television cable services (limited to new audiovisual services) CPC 752 Telecommunications services (limited to new telecommunications services) CPC 8499 Other computer services n.e.c. (limited to new computer services) CPC 8719 Other advertising services (limited to new advertising services) CPC 87909 Other business services n.e.c. (limited to new auctioneering services) CPC 9611 Motion picture and video production and distribution services (limited to new audiovisual services) CPC 9612 Motion picture projection services (limited to new audiovisual services) CPC 9613 Radio and television services (limited to new audiovisual services) CPC 96199 Other entertainment services n.e.c. (limited to new entertainment services) CPC 96499 Other recreational services n.e.c. (limited to new recreational services) Industry Classification: Internet-based services (limited to new services).



Japan - Mexico	Negative	<p><b>Japan</b> made a reservation on new services in all sectors as follows: "Japan reserves the right to adopt or maintain any measure relating to new services other than those recognised or that should have been recognised owing to the circumstances at the time of entry into force of this Agreement by the Government of Japan.</p> <p>Japan reserves the right to adopt or maintain any measure relating to the supply of services in any mode of supply in which those services were not technically feasible at the time of entry into force of this Agreement.</p> <p>Any services classified positively and explicitly in JSIC or CPC at the time of entry into force of this Agreement should have been recognised by the Government of Japan at that time."</p> <p><b>Mexico</b>, in its FTA with Japan, also made the same reservation on new services.</p> <p><b>Switzerland</b>, in its bilateral FTA with Japan, made a reservation on services not mentioned explicitly in the CPC; more specifically on new services, Switzerland made a reservation in various sectors including computer, advertising, telecommunication, audiovisual, entertainment, recreational and internet-based services. According to Switzerland, "new services" means services that are not currently delivered on the Swiss market; it includes services related to existing or new products or the manner in which a product or service is supplied.</p>
Japan - Peru	Negative	
Japan - Switzerland	Negative	
EFTA – Hong Kong, China	Negative	In addition to Switzerland, <b>Iceland, Liechtenstein and Norway</b> have also made a reservation on new services and services not explicitly listed in W/120. However, neither Norway nor Iceland has provided a definition of new services.
Singapore - Panama	Negative	<p>The chapter on cross-border trade in services contains a provision on new services (Article 10.8) which recognizes each Party's right to impose conditions on the supply of any new service by service suppliers of the other Party.</p> <p>The term "new services" means a service that at the date of entry into force of this Agreement is: (a) not currently in existence in the territory of a Party; or (b) an existing service not covered or defined in the United Nations Central Product Classification ("CPC"), and which is not subject to any regulatory framework in the territory of a Party owing to its infant stage of development as the Party concerned considers it to be as such.</p>
Singapore – New Zealand	Positive for Trade in services	A provision under Article 8.2. "Scope" states: "New services, including new financial services, shall be considered for possible incorporation into this Agreement at future reviews held in accordance with Article 15.4 (Review), or at the request of either Party immediately. The supply of services which are not technically or technologically feasible when this Agreement comes into force shall, when they become feasible, also be considered for possible incorporation at future reviews or at the request of either Party immediately".

Examples of "new services" carve-outs or reservations in FTAs suggest that despite the all-for-liberalization assumption embedded in the negative list approach, several governments tend to confine its commitments on substantive obligations to services sectors and subsectors that are explicitly included in the classification systems currently in use, be it CPC or national classification, which are usually within the purview of regulation. In other words, these governments do not want to see the negative list approach open the way to future uncertainty.

#### *Standstill as benchmark and lock-in of future liberalization*

Given that scheduling approaches are intended to be means of liberalization, a logic question is how effective they might be in achieving liberalization goals.

The GATS is known for its flexibility which is embodied in allowing WTO Members to determine the breath and extent of specific commitments in their schedules with no obligation on the minimum level of binding. It turned out that many GATS commitments undertaken during the Uruguay Round failed to bind the applied regimes, let alone liberalization. Most liberalization commitments under the GATS were undertaken by "new" Members who joined the WTO through accession negotiations. Like the GATS, most positive list FTAs do not set liberalization benchmarks.



The negative list approach is usually associated with a standstill clause and in most cases, a ratchet clause whereby the decrease of the conformity of the measure is not allowed, "as it existed at the date of entry into force of this Agreement" (*standstill*) and "as it existed immediately before the amendment" (*ratchet*). Thus, by preventing any possible amendment that might result in a more restrictive measure than the existing measure, a negative list FTA would not only bind the actual market opening level at the time of first commitments, but also lock in any future unilateral liberalization. For example, under the CPTPP, Article 10.7 (1)(c) on "Non-conforming Measures" contains a ratchet principle stating that National Treatment, Most-Favoured-Nation Treatment, Market Access, and Local Presence obligations "shall not apply to an amendment to any existing non-conforming measure, to the extent that the amendment does not decrease the conformity of the measure, *as it existed immediately before the amendment*". Thus, the negative list approach ensures the certainty of level of liberalization and prevents the Parties from backtracking their commitments.

While the standstill and ratchet clauses were initially introduced in negative list FTAs, they are not prevented from being adopted in positive list FTAs. Some practices suggest that standstill and ratchet could be "innovatively" used to help improve levels of liberalization under the positive list approach. For example,

- The *Singapore – Sri Lanka FTA* (positive list, not notified under GATS Article V yet) requires each Party to "identify in its Schedule of Specific Commitments sectors or subsectors for future liberalisation" and limit any applicable terms, conditions, limitations, qualifications and undertakings on market access and national treatment in these sectors and subsectors to measures that the Party maintains on the date of entry into force of the Agreement (Article 7.6:3).
- Similarly, under the RCEP, in case a Party opts for a positive list to schedule its services commitments, the terms, limitations, conditions and qualifications on market access and national treatment shall be limited to existing measures of that Party and sectors or subsectors for future liberalization shall be identified in the schedule (Article 8.7:3). This is an important development as far as the positive list approach is concerned.

In addition, some positive list FTAs contain provisions with a view to incorporating future unilateral liberalization in the agreement. For example, the *Australia-Thailand FTA* contains the following provisions:

*"If, after this Agreement enters into force, a Party further liberalises any of its services sectors, sub-sectors or activities, it shall consider a request by the other Party for the incorporation in this Agreement of the unilateral liberalisation."*

*If, after this Agreement enters into force, a service previously supplied in the exercise of governmental authority is subsequently supplied on a commercial basis or in competition with one or more service suppliers, the Party concerned shall consider a request by the other Party for the incorporation in this Agreement of new commitments relating to that service."* (Article 812)

#### *Transparency and information gaps*

A schedule of positively listed commitments cannot provide information about those sectors that are not listed. In the absence of a standstill requirement, it is also obscure whether the limitations on market access and national treatment as inscribed in the schedule correspond to existing measures. Such information gap sometimes can be huge in case very few sectors or subsectors are included in the schedule and schedules cannot be updated for a long time. In addition, many commitments in schedules are entered as "Unbound", which makes it even more obscure for both existing and future services market conditions. "Unbound" means that the government concerned has regulatory discretion to adopt or maintain any limitations on market access or national treatment in relevant sectors for relevant modes of supply. As widely recognized, no standstill requirement, commitments on limited sectors, no updates over years, and "Unbound" entries, these are common problems associated with GATS schedules. As a result, there is huge "water" in GATS commitments, namely a huge gap between the binding conditions and applied regimes, which undermines the meaningfulness or value of GATS commitments. Lack of transparency is considered by many as a shortcoming of the positive list approach.

In comparison, negative list FTAs tend to be more transparent with more detailed information provided in terms of limitations maintained across all services sectors (namely "existing non-forming measures") as well as sectors/subsectors subject to future limitations. First, the top-down assumption combined with the standstill requirement would make it clear that all services sectors are bound at the *status quo* level and that all limitations in each individual sector/subsector are listed in the schedule. Second, in addition to the description of the limitation, the specific measure, i.e. the particular provisions in the relevant legislation, is also listed, which would provide business with precise regulatory information. Third, in negative list FTAs, that the substantive obligations subject to scheduling go beyond market access, national treatment and MFN makes commitments more informative. For cross-border trade in services, there is usually an additional obligation on local presence whereby any Party may not make the establishment of commercial presence or residency in its territory as a condition for the cross-border supply of a service. On investment, additional obligations subject to scheduling usually include those related to performance requirements,<sup>28</sup> local content requirements<sup>29</sup> and requirements on Senior Management and Boards of Directors.<sup>30</sup> Subjecting measures in these areas to scheduling would provide foreign service suppliers and investors with important clarity on competitive conditions in the market. In contrast, in the GATS context, clarification is usually needed with respect to whether local presence requirements under mode 1, or performance and local content requirements under mode 3 are limitations on market access within the meaning of GATS Article XVI or limitations on national treatment within the meaning of GATS Article XVII. The way negative list FTAs treat these types of measures could arguably increase clarity and certainty of the business environment for trade in services.

Nevertheless, information gaps exist in negative list FTAs as well, especially in relation to future non-conforming measures. It is not uncommon in negative list FTAs that sweeping reservations to certain types of measures are made for all sectors or broad reservations are introduced for numerous sectors. Common language may be like: XXX reserves the right to adopt or maintain a measure affecting investment or the supply of services in the XXX sector; or, XXX reserves the right to adopt or maintain a measure relating to for example, residency requirements, or public utilities for investment or the supply of services in all sectors. This type of reservations is equivalent to "Unbound" for future measures, therefore, create uncertainty. Besides, the "new services carve-out/reservation" in negative list FTAs also lead to a notable information gap, especially in cases where "new services" are not even defined.

Arguably, the transparency advantage of the negative list approach over the positive list approach mainly lies with the standstill requirement. As such, by incorporating the standstill requirement, positive list FTAs could significantly improve the transparency of commitments.

Recently, some FTAs have tried to address the problem of lack of transparency in commitments based on a positive list. Japan's Economic Partnership Agreements (EPAs) with a number of Asian economies made interesting tests in this regard. In these EPAs, the Parties' commitments on trade in services were undertaken on a positive list basis. Better transparency can arguably be achieved through (a) identifying in the schedule of specific commitments those existing limitations on market access and national treatment;<sup>31</sup> and/or (b) submitting a non-binding transparency list of existing measures inconsistent with market access and national treatment.<sup>32</sup>

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<sup>28</sup> In principle, performance requirements are regulatory conditions imposed by host governments and aligned with their development strategies requiring investors to fulfil certain tasks in relation to the establishment or operation of their investments such as transferring technology to the country; or achieving a specific level of local jobs. These requirements are usually prohibited, thus, governments would have made reservations on those measures if they wish to adopt or maintain in the future.

<sup>29</sup> Local content requirements may consist of measures directly imposing a percentage or quota to be achieved or requiring the priority use of local goods and services over foreign goods and services of equal quality. These requirements are usually found in the obligation related to performance requirements.

<sup>30</sup> Requirements on Senior Management and Boards of Directors concern the nationality and place of residence of a person in a senior management position.

<sup>31</sup> For example, Article 99.3 of the *Japan-Malaysia EPA* provides that "[w]ith respect to sectors or sub-sectors where the specific commitments are undertaken ... and which are indicated with "SS", any terms, limitations, conditions and qualifications, ..., other than those based on measures pursuant to immigration laws and regulations, shall be limited to those based on non-conforming measures, which are in effect on the date of entry into force of this Agreement." A similar provision can be found in *Japan – the Philippines EPA* (Article 75.3), the *Japan – Mongolia EPA* (Article 7.7) and the *Japan – Thailand EPA* (Article 77.4).

<sup>32</sup> For example, Article 7.14 of the *Japan-Mongolia EPA* provides that "[e]ach party shall prepare a non-binding list providing all relevant measures affecting obligations" under the articles on market access, national

The practices of Japan's EPAs with Asian economies in improving transparency of commitments based on a positive list were consolidated in the RCEP. According to the RCEP, a Party making commitments following the positive list approach *"shall prepare, forward to the other Parties, and make publicly available on the internet, a non-binding transparency list of its existing measures maintained at the central government level which are inconsistent with market access and national treatment obligations"* and that *"such a Transparency List shall cover the sectors in which the Party has undertaken specific commitments"* (Article 8.10:1). Each Transparency List shall include the following elements: (a) the sector and subsector or activity; (b) the type of inconsistency (National Treatment or Market Access); (c) the legal source or authority of the measure; and (d) a succinct description of the measure (Article 8.10:3). Moreover, a Party shall update, as necessary, its Transparency List to ensure it is complete and accurate by: (a) adding any new or amended inconsistent measure; or (b) removing any measure that has ceased to exist, or any sector, subsector, or activity for which it no longer maintains an inconsistent measure (Article 8.10:4). These elements are usually found in the negative list of non-conforming measures.

### **3 Role of Scheduling Approaches in Achieving FTA Objectives and Generating Negotiation Dynamics**

As argued earlier, scheduling approaches are not simple formats or techniques whereby commitments resulting from services trade negotiations are recorded. Different scheduling approaches are associated with different trade negotiation philosophies and liberalization goals. As such, they have important implications for negotiation strategies and trade policies pursued by governments. Most governments tend to stick to a negotiation "template" and be consistent in choosing scheduling approaches in their FTAs, because this is probably the most cost-effective way to organize internally and to negotiate. Once an FTA is concluded, the negotiators involved would become familiar with the legal structure, terminology, and substantive obligations as well as the associated scheduling approach; the schedule of commitments in that FTA could serve as the basis for future FTAs. Adopting a new way of scheduling commitments would require training for negotiators on the technicality of different approaches and their application to ensure that the commitments are made in accordance with trade policies without any unintended consequences. Nevertheless, we do note that some governments appear more flexible than others in changing or fine-tuning scheduling approaches in FTAs. This is because governments may also need to adjust negotiation strategies including scheduling approaches from time to time, depending on the evolution of circumstances or different trading partners.

Section 2 notes main differences between the positive list approach and the negative list approach. Where the negative list approach may have the advantage in achieving a higher level of liberalization and better transparency, it usually makes many governments concerned about lack of regulatory discretion in dealing with future uncertainties in services trade. With respect to the positive list approach, while its main advantage is no doubt the flexibility governments benefit in the pursuit of liberalization, it usually leaves significant information gaps on market conditions and may not help achieve meaningful commitments unless certain benchmarks such as binding status quo (standstill) could be set in the agreement. As noted above, recent years have seen some recent FTAs seek to bridge the gaps between the positive and negative list approaches.

This section examines some major economies' FTA practices to have a better understanding of the role of scheduling approaches in achieving FTA objectives and managing negotiation dynamics.

#### *Seeking high levels of liberalization and setting standards: the U.S. "approach"*

The United States is the largest services exporter in the world and services account for 35 per cent of overall U.S. exports in 2019. Unsurprisingly, the United States attaches great importance to pursuing high levels of liberalization in services trade through FTA negotiations. What is striking is the high degree of consistency in the U.S. FTAs. The United States has 14 FTAs in force with

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treatment and MFN in all sectors" and that the "list shall be exchanged with the other Party and made publicly available within five years from the date of entry into force of this Agreement and shall also be subject to future review and revision where necessary or as agreed between the Parties". The list shall include the following elements: a) sector and sector-sub or matter; b) type of inconsistency (i.e., national treatment, MFN, and/or market access); c) legal source or authority of the measure; d) brief description of the measure. A similar provision can be found in the *Japan – Brunei Darussalam EPA* (Article 82.2), the *Japan – The Philippines EPA* (Article 79.2) and the *Japan – India EPA* (Article 66.2).

20 countries, of which 12 closely follow the format of NAFTA in terms of trade in services and investment, including the negative list approach.<sup>33</sup> Those countries that concluded negative list FTAs with the United States, including both developed and developing,<sup>34</sup> usually undertook services commitments far more comprehensively than their GATS commitments. These commitments accord new and substantial market access to services suppliers of the United States, especially in financial, telecommunications, computer, distribution, express delivery, energy, environmental, and professional services, namely the sectors where the U.S. services industries are competitive in the global market. Together with substantial market access commitments, these FTAs usually include rules on financial, telecommunication, express delivery, and professional services, which would guarantee the materialization of the benefits of market access commitments.<sup>35</sup> For example, as noted by the United States:

- The provisions of the FTA with Australia "significantly advance the market access goals of U.S. services industries with a major trading partner" as Australia has provided commitments above those made in the GATS in a wide range of services sectors.<sup>36</sup> In particular, the financial services chapter "includes important cross border commitments in mutual fund portfolio management and in insurance with respect to reinsurance, marine aviation and transport, and intermediation".<sup>37</sup>
- The FTA with Chile ensures "[n]ew access for U.S. banks, insurance companies, telecommunications companies, securities firms, express delivery companies, and professionals" "to a fast-growing Chilean services market". "U.S. firms may offer financial services to participants in Chile's privatized pension system".<sup>38</sup>
- The FTA with Colombia accords to the U.S. services suppliers "substantial market access across its entire services sector". "Colombia agreed to eliminate measures that prevented U.S. firms from hiring U.S. professionals, and to phase-out market restrictions in cable television". "Colombia also agreed to provide improved access for U.S. suppliers of portfolio management services".<sup>39</sup>
- The FTA with Panama "provides extensive market access into Panama for American financial services firms – supplementing and modifying the Agreement's rules on investment and services without undermining the right of U.S. financial regulators to take action to ensure the integrity and stability of financial markets or address a financial crisis. Importantly, Panama commits to treat U.S. financial institutions comparably to their competitors in the Panamanian market." In telecommunications, "Panama has agreed to a pro-competitive regulatory framework that builds upon the WTO Basic Telecommunications Reference Paper and guarantees competitive access to Panamanian telecom networks on reasonable and non-discriminatory terms. U.S. telecommunications companies are ensured the right to interconnect with Panamanian dominant carriers' fixed networks at non-discriminatory and cost-based rates".<sup>40</sup>
- The FTA with Peru "eliminates Peruvian measures that required U.S. firms to hire national rather than U.S. professionals and measures requiring the purchase of local goods. Peru

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<sup>33</sup> Two exceptions in the US FTAs: US-Israel FTA and US-Jordan FTA. The US-Israel FTA contains only a provision on trade in services, which states: "The Parties recognize the importance of trade in services and the need to maintain an open system of services exports which would minimize restrictions on the flow of services between the two nations. To this end, the Parties agree to develop means for cooperation on trade in services pursuant to the provisions of a Declaration to be made by the Parties." The Declaration on Trade in Services establishes the non-binding principles for policies affecting trade in services between Israel and the United States. The US-Jordan FTA refers to the GATS provisions on market access and national treatment and adopts the GATS listing approach.

<sup>34</sup> These countries include Australia, Kingdom of Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Republic of Korea, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, and Singapore.

<sup>35</sup> <https://ustr.gov/trade-agreements/free-trade-agreements>

<sup>36</sup> Report of the Industry Sector Advisory Committee on Services for Trade Policy Matters (dated 12 March 2004) lists the services "including certain advertising services, filmed entertainment services, packaging services, printing and publishing services, video tape rental and leasing services; medical and hospital services, data base services, R&D services on natural sciences, technical testing and analysis, TV and radio broadcast transmission services, cable and satellite transmissions services, live entertainment services, news agency services, commercially provided library, archive, museum or other cultural services, rail transport." [https://ustr.gov/archive/assets/Trade\\_Agreements/Bilateral/Australia\\_FTA/Reports/asset\\_upload\\_file118\\_3412.pdf](https://ustr.gov/archive/assets/Trade_Agreements/Bilateral/Australia_FTA/Reports/asset_upload_file118_3412.pdf)

<sup>37</sup> Report of the Industry Sector Advisory Committee on Services for Trade Policy Matters, 12 March 2004.

<sup>38</sup> <https://ustr.gov/trade-agreements/free-trade-agreements/chile-fta>

<sup>39</sup> <https://ustr.gov/uscolombiatpa/facts>

<sup>40</sup> <https://ustr.gov/uspanamatpa/facts>

also agreed that both mutual funds and pension funds in Peru will be allowed to use portfolio managers in the United States".<sup>41</sup>

- The FTA with Singapore "meets the ... objective of achieving new and expanded trading opportunities for specific service sectors, including: audiovisual; banking, securities and asset management; distribution; e-commerce; education; energy; express delivery; healthcare; insurance; professional (e.g., accounting, legal, consulting, architectural and engineering services); telecommunications and information technology; transportation; and travel and tourism".<sup>42</sup>

Notably, the critical role of the negative list approach in seeking high levels of liberalization was unambiguously recognized. It is understood that given the negative list structure of the FTA legal text, all previously acquired market access or investment rights by U.S. companies (i.e., acquired rights) were protected in FTAs.<sup>43</sup> It is also understood that "[b]ecause of the 'negative list' approach to sector coverage", U.S. FTAs secured "access for all new services, ensuring the relevance of this agreement into the future".<sup>44</sup>

It is worth noting that those economies having concluded FTAs with the United States, with few exceptions, have become more inclined to the negative list approach in their subsequent FTAs.

#### *Different scheduling approaches serving different objectives: the EU's "approach"*

The European Union used to focus on trade negotiations at the multilateral level and did not actively pursue bilateral FTAs until around 2008 when the WTO negotiations under the Doha Development Agenda reached an impasse. The EU trade agreements typically cover services as services represent three quarters of the EU GDP and two thirds of its employment and the EU is the world's biggest exporter of services. Services also account for over 80% of the EU's inward foreign direct investment, and for more than 60% of its outward foreign direct investment. However, unlike the United States, Canada or even Australia for which the negative list is clearly the dominant approach to services FTAs, the EU appears quite flexible in choosing scheduling approaches: positive, negative or hybrid, these approaches seemingly all have found a place in EU trade agreements which vary in terms of objectives, structure, and scope, mostly depending on trading partners.

In early EU trade agreements with countries outside the Europe, the services chapter closely followed the GATS provisions including the positive list approach. This was the case for the *2001 EU - Mexico Global Agreement* and the *2002 EU - Chile Association Agreement* which were aimed at reciprocal liberalization of trade in services on the basis of the principle of non-discrimination in conformity with Article V of the GATS. Like the GATS, these two agreements set no benchmark for specific commitments. In recent years, as the EU attempted to "modernize" its early trade agreements, one of the modernization efforts was to shift from the positive list approach to the negative list approach for services and investment commitments. On 21 April 2018, the EU and Mexico reached a modernised agreement which will replace the previous *EU-Mexico Global Agreement* once in force. The new *EU - Mexico Trade Agreement* adopted the *standard* format for a negative list FTA on cross-border trade in services and investment chapters whereby the schedule of specific commitments was replaced with the list of reservations (existing and future non-conforming measures) and the substantive obligations subject to commitments went beyond market access and national treatment. In explaining why negotiating a new trade agreement with Mexico, the EU indicated that one of the main objectives was to "allow EU firms to sell more services to Mexico".<sup>45</sup> Likewise, as the EU and Chile started the negotiation process for the modernisation of the *EU - Chile Association Agreement* in 2017, one of the EU's modernization proposals is to follow the same *standard* negative list FTA for trade in services and investment.<sup>46</sup>

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<sup>41</sup> <https://ustr.gov/trade-agreements/free-trade-agreements/peru-tpa>

<sup>42</sup> Report of the Industry Sector Advisory Committee on Services for Trade Policy Matters (ISAC 13), 28 February 2003  
[https://ustr.gov/archive/assets/Trade\\_Agreements/Bilateral/Singapore\\_FTA/Reports/asset\\_upload\\_file184\\_3249.pdf](https://ustr.gov/archive/assets/Trade_Agreements/Bilateral/Singapore_FTA/Reports/asset_upload_file184_3249.pdf)

<sup>43</sup> Ibid.

<sup>44</sup> Report of the Industry Sector Advisory Committee on Services for Trade Policy Matters (ISAC 13), 12 March 2004.

<sup>45</sup> [https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mexico/eu-mexico-agreement\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mexico/eu-mexico-agreement_en)

<sup>46</sup> EU proposal for an Investment and Trade in Services Title in the Trade Part of a possible modernised EU-Chile Association Agreement [https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc\\_156589.pdf](https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156589.pdf)

The EU signed a comprehensive trade agreement respectively with the Central American countries<sup>47</sup> and the Andean Community countries<sup>48</sup>, which entered into force in 2013 for most Parties. The EU also concluded its trade agreement with Mercosur states (Argentina, Brazil, Paraguay and Uruguay) on 28 June 2019 as part of a bi-regional Association Agreement. In Asia, the EU reached FTAs with several countries including the Republic of Korea (2010), Singapore (2018), and Viet Nam (2019). In these agreements, trade in services is treated in the chapter on cross-border trade in services (modes 1 and 2), the chapter on investment or establishment (mode 3)<sup>49</sup>, and the chapter on the temporary presence of natural persons supplying services (mode 4). The positive list approach was adopted for specific commitments and the substantive obligations subject to commitments consist of market access and national treatment only. No benchmark was set for specific commitments. While taking a format slightly different from the format of the GATS schedule,<sup>50</sup> the commitments undertaken under these agreements are easily comparable to the Parties' GATS commitments. It is interesting to note that while the *EU – Republic of Korea FTA* follows a similar structure including the positive list approach, it includes a standstill requirement by stating: "*Neither Party may adopt new, or more, discriminatory measures with regard to services or service suppliers (establishment and investors) of the other Party in comparison with treatment accorded pursuant to the specific commitments undertaken.*" (Articles 7.7 and 7.13). In the *EU - Viet Nam FTA*, there is an additional obligation not to impose performance requirements on foreign investments in sectors where specific market access and national treatments commitments are undertaken, subject to conditions and qualifications set out therein (Article 8.8). As noted above, the inclusion of an obligation not to impose performance requirements on foreign investments is a common feature of negative list FTAs.

The EU also signed a series of Economic Partnership Agreements (EPAs) with African, Caribbean and Pacific countries (ACP) which serves as the new legal framework for the EU - ACP relations including trade relations.<sup>51</sup> Of the seven EPAs, so far only the Agreement with the Caribbean countries, namely the *EU - CARIFORUM EPA*, includes the obligations and specific commitments on trade in services. Similar to the EU trade agreements with the Central America and the Andean Community, commitments on cross-border trade in services and investment were undertaken based on the positive list approach, and the substantive obligations subject to commitments consist of market access and national treatment only. The *EU - CARIFORUM EPA* also includes a GATS-type provision on future liberalization: "*the Parties shall enter into further negotiations on investment and trade in services no later than five years from the date of entry into force of this Agreement with the aim of enhancing the overall commitments undertaken*" (Article 62). The *EU - SADC EPA* provides that "*the Parties may negotiate trade in services to extend the scope of this Agreement*" and one of the principles guiding such negotiations is that "*negotiations shall cover lists of commitments, setting out the conditions applicable to the liberalisation of trade in services. Such conditions shall be listed per sector liberalised and include, where necessary, limitations on market access and national treatment as well as transition periods for liberalisation*" (Article 73). This provision suggests that the GATS including the positive list approach will guide the future services chapter.

Unsurprisingly, the EU trade agreements with developed economies including Canada, Japan and the United Kingdom adopted the NAFTA-type structure for a negative list FTA on cross-border trade in services and investment chapters whereby liberalization commitments were undertaken with reservations on existing and future non-conforming measures and with the mechanisms of "standstill and ratchet" built in, and the substantive obligations subject to commitments went beyond market

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<sup>47</sup> The trade pillar of the Association Agreement with the Central America has been provisionally applied since 1st August 2013 with Honduras, Nicaragua and Panama, since 1st October 2013 with Costa Rica and El Salvador, and since 1 December with Guatemala.

<sup>48</sup> The agreement has been provisionally applied with Peru since 1 March 2013, and with Colombia since 1 August 2013. On 1 January 2017, Ecuador joined the trade agreement.

<sup>49</sup> In the EU-Central America trade agreement, "establishment" is used as a synonym of foreign direct investment. According to Article 10 of the Agreement, "establishment" means any type of business or professional establishment through (a) the constitution, acquisition or maintenance of a juridical person; or (b) the creation or maintenance of a branch or representative office within the territory of a Party for the purpose of performing an economic activity. The term "business or professional establishment" includes the establishment in any productive economic activity, whether industrial or commercial, relating to the production of goods and supply of services.

<sup>50</sup> The list of commitments is organized in two columns while

<sup>51</sup> The EPAs the EU signed with the ACP countries include EU-Central Africa EPA (2008), EU-Eastern and Southern African EPA (2009), EU-East African Community EPA (2016), EU-SADC EPA (2016), EU-West Africa EPA (2014), EU-CARIFORUM EPA (2008), and EU-Pacific States (Papua New Guinea, Fiji, Samoa and the Solomon Islands) EPA (2009),



access and national treatment. Apparently, in the view of the EU, the negative list approach associated "standstill and ratchet" and broader substantive obligations can help achieve a higher level of liberalization.

In another group of FTAs, the EU tested the hybrid list approach to commitments on cross-border trade in services and investment. The common pattern is to take the positive list approach for commitments on cross-border trade in services and the negative list approach for commitments on investment, and the substantive obligations subject to commitments are limited to market access and national treatment. This is the case for the Association Agreements between the EU and some Eastern European countries including Armenia, the Republic of Moldova, Georgia, and Ukraine respectively.

Since the launch of the Stabilisation and Association Process in 1999, the EU has progressively concluded bilateral FTAs – referred to as "Stabilisation and Association Agreements" (SAAs) with each of the Western Balkan states: Albania (2009), North Macedonia (2004), Montenegro (2010), Serbia (2013), Bosnia and Herzegovina (2015) and Kosovo (2016). The SAAs are tools for the creation of a close, long-term association between the EU and the Western Balkans and constitute the legal instrument for alignment to the EU acquis and progressive integration into the EU market. The services chapter in these trade agreements is intended to recognize the right of companies and nationals of each party within a single market in terms of the supply of services, together with establishment, the movement of persons and capital. As such, there are no such provisions as market access and national treatment, nor the mechanism for the scheduling of commitments. This is because specific commitments on trade in services, regardless of list approaches, are to pursue reciprocal market access in an FTA framework. They do not serve the objective of free movement of capital, services and persons within a single market.

#### *Building upon the GATS: the EFTA's "approach"*

As noted in Section 1, the positive list is the approach traditionally preferred by most developing economies in FTAs. This does not mean that the negative list approach is necessarily the preference of all developed economies. As the cases of the United States and the European Union have shown, the choice of scheduling approach, to a large extent, depends on the objectives an economy intends to pursue in FTAs. Such objectives are mostly commensurate with that economy's competitiveness in services trade, but also subject to overall trade relations with particular trading partners. The FTAs concluded between the European Free Trade Association (EFTA, consisting of Iceland, Norway, Switzerland and Liechtenstein)<sup>52</sup> and other economies are interesting examples again in this regard.

Combined, the EFTA States are the world's 7th largest services trader, after the European Union, United States, China, Japan, India, and Singapore. Their main export interests include financial services, services incidental to manufacturing, tourism, energy related services, maritime transport services, logistics services, professional services and telecommunications, which correspond to the specialities or comparative advantages of the EFTA economies. The EFTA adapts its FTA approach to respond to its position in global services trade and its main export interests.

To date, the EFTA has 29 FTAs in force with 40 countries and territories outside the EU, which followed the objectives it set in various trade areas, including trade in services. The EFTA made it clear that its FTAs shall "include provisions on the liberalisation of trade in services, covering all modes of supply and containing specific provisions on sectors of particular importance, such as maritime, financial and telecommunication services" and "build on the WTO General Agreement on Trade in Services (GATS) and normally follow a similar approach, complemented by enhanced specific commitments".<sup>53</sup> While the goal, as far as possible, is to achieve a higher level of liberalization than that under the GATS, the EFTA does not require negotiating partners to change their legislation. The EFTA concluded trade in services chapters including specific commitments in

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<sup>52</sup> The services chapter (Chapter X) of the EFTA Convention is designed to integrate the services market within the EFTA area. It therefore provides that subject to national reservations, "there shall be no restrictions on the right to supply services within the territory of the Member States in respect of natural persons, companies or firms of Member States who are established in a Member State other than that of the natural person, company or firm for whom the services are intended" (Article 29:1). The EFTA Member States also agreed to eliminate gradually remaining discriminations (Article 29:3) and not to adopt new, or more, discriminatory measures as regards services or service suppliers of another Member State (Article 29:4). Existing reservations largely reflect the EFTA States' commitments undertaken under the GATS.

<sup>53</sup> <https://www.efta.int/Free-Trade/EFTA-Objectives-FTAs-502455>

FTAs with the Central American States (Costa Rica, Guatemala and Panama); Chile; Colombia; Ecuador; the Gulf Cooperation Council (GCC); Georgia; Hong Kong, China; Indonesia; the Republic of Korea; Mexico; Singapore; Türkiye; and Ukraine. Negotiations currently underway with Georgia, India, Malaysia, the Philippines and Viet Nam also include trade in services, while talks are ongoing as to expanding the scope of existing free trade agreements with Canada to also include chapters on trade in services.

As the case for most FTAs, it was after the year of 2000 that the EFTA extended the scope of its FTAs to cover trade in services. The first time EFTA attempted to include trade in services in an FTA was in its trade negotiations with Canada (1997-2007). However, the EFTA and Canada failed to agree on the format and content of a services chapter, including the scheduling approach. With the entry into force of the FTAs with Mexico (2001) and Singapore (2003), the EFTA established a model for the service chapter in its FTAs. The EFTA model takes the GATS as the basis and goes beyond the GATS in some general provisions and in specific commitments as well as include sectoral annexes in areas of mutual interest to the EFTA States and their trading partners (e.g., financial services, telecommunications, maritime transport, energy related services or tourism). The structure and substantive provisions of the EFTA model largely resembles those of the GATS: its scope covers all measures affecting trade in services; trade in service is defined as the supply of services in the form of four modes; the general provisions apply to all services sectors except those explicitly carved out from the scope (services supplied in the exercise of governmental authority and certain measures affecting air traffic rights), and notably include obligations such as MFN, domestic regulation, transparency, and payments and transfers, etc. In some cases, the EFTA FTA simply refers to the GATS provisions by stating, for instance, "Article XVI of the GATS applies and is hereby incorporated into and made part of this Agreement". Like in the GATS, the obligations on market access and national treatment in the EFTA model do not apply to all services sectors; rather, their application depends on specific commitments. Some EFTA FTAs include an investment chapter ("Establishment") which usually excludes services from its scope of application and take the negative list approach to commitments.<sup>54</sup>

With the EFTA's model text being subject to negotiations, the level and formulation of obligations vary somewhat from partner to partner. In terms of the scheduling of services commitments, the EFTA FTAs normally followed the GATS-type positive list approach. Nevertheless, the exceptions are noteworthy. The *EFTA – Hong Kong, China FTA* arguably adopted the negative list approach as market access and national treatment apply to all sectors except those listed in each Party's reservation list. It, however, does not use the terminology usually seen in the standard NAFTA-type negative list FTAs<sup>55</sup> and the provisions under which the parties may make reservations concern MFN, market access and national treatment only. It is also interesting that under the *EFTA-Mexico FTA*, the Parties' commitments on financial services were scheduled in a negative list with both standstill and ratchet requirements. Also, under the *EFTA-Mexico FTA*, while the lists of commitments have yet to be established, the Parties agreed to bind the existing level of regulation and market access conditions. The standstill provision states: "*From the entry into force of this Agreement, neither Party shall adopt new, or more, discriminatory measures as regards services or service suppliers of another Party, in comparison with the treatment accorded to its own like services or service suppliers.*"<sup>56</sup>

#### *Mega-FTAs: converging towards the negative list approach*

Recent years have seen the emergence of mega-FTAs, namely trade agreements with a large membership, representing significant shares of world GDP and world trade, and with a view to promoting deep economic integration. They thus differ from previous FTAs in terms of geographic scale, economic importance, and complexity of trade relations. The *Comprehensive and Progressive*

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<sup>54</sup> The EFTA FTAs with an investment chapter include: EFTA – Central American States (Costa Rica, Guatemala and Panama); EFTA – Chile; EFTA – Colombia; EFTA – Georgia; EFTA – Hong Kong, China; EFTA – Ukraine.

<sup>55</sup> Article 3.17 of the EFTA – Hong Kong, China FTA provides that the provisions on MFN, market access and national treatment (Articles 3.4 to 3.6) shall not apply to: (a) existing measures that a Party may maintain, renew at any time or modify without reducing their level of conformity with Articles 3.4 to 3.6, with respect to an EFTA State consistent with its List of Reservations under Annex X and, with respect to Hong Kong, China consistent with its First List of Reservations under Annex X; and (b) measures that a Party may adopt, maintain or modify, with respect to an EFTA State consistent with its List of Reservations under Annex X and, with respect to Hong Kong, China consistent with its Second List of Reservations under Annex X.

<sup>56</sup> EFTA – Mexico FTA, Article 24:2



*Agreement for Trans-Pacific Partnership (CPTPP)* and the *Regional Comprehensive Economic Partnership (RCEP)* are the two mega-FTAs currently in force.

Following the United States withdrawal from the Trans-Pacific Partnership (TPP) Agreement in 2016, 11 TPP signatory countries<sup>57</sup> signed the CPTPP in 2018, representing 13.3% of world GDP and 14.4% of world trade. The CPTPP entered into force for Australia, Canada, Japan, Mexico, New Zealand and Singapore on 30 December 2018 and for Viet Nam on 14 January 2019. The agreement will enter into force for Brunei Darussalam, Chile, Malaysia and Peru 60 days after they complete their respective ratification processes.

The TPP was driven by the United States, designed to pursue ambitious objectives such as opening markets, setting high-standard trade rules, and addressing 21<sup>st</sup>-century issues in the global economy.<sup>58</sup> The CPTPP incorporates, by reference, the provisions of the US-driven TPP except a limited set of suspended provisions and maintains the substantial market access package secured in the original TPP, covering commitments on trade in goods, trade in services and foreign investment. In terms of trade in services, as new and meaningful market access being one of the major objectives, the CPTPP follows the legal structure of the NAFTA-type negative list FTA (or the US FTA template) where the four modes of supply are covered in different chapters (i.e., "Cross-Border Trade in Services", "Investment", "Temporary Entry for Business Persons"), complemented by chapters on financial services, telecommunications and electronic commerce. Each Party's services commitments are listed in two annexes (Annex I "Non-conforming existing measures" and Annex II "Non-conforming future measures") whereby the CPTPP countries have committed to not only lock in existing market conditions (*standstill*), but also incorporate future market liberalisation in the agreement (*ratchet*). It is noteworthy that Brunei Darussalam, Malaysia and Viet Nam, for the first time, shifted from their traditional preference for the positive list approach to take the negative list approach.

The RCEP is the trade agreement between the Association of Southeast Asian Nations (ASEAN)<sup>59</sup> and its five largest trading partners, namely China, Japan, Republic of Korea, Australia and New Zealand. Effective since 1 January 2022, the RCEP covers 2.3bn people and represents around 30% of world GDP and 13% of world trade. It is aimed to establish a modern, comprehensive, high-quality, and mutually beneficial economic partnership that would facilitate the expansion of regional trade and investment. Overall, the RCEP may appear not as "high standard" as CPTPP since its membership includes some low-income developing economies and it built upon the templates of the ASEAN Economic Community and ASEAN+1 FTAs. The structure of the chapter on trade in services is arguably "closer" to the GATS than the CPTPP and trade in services is defined as the four modes of supply as in the GATS. Nevertheless, as far as the scheduling of services commitments is concerned, the RCEP arguably adopted the negative list approach together with the standstill and ratchet requirements. What is notably interesting is that the RCEP provides for a transition mechanism whereby its Parties may choose to first establish a Schedule of Specific Commitments ("positive list") and then within a 3-year transition period (12 years for LDCs),<sup>60</sup> replace it with a Schedule of Non-Conforming Measures ("negative list") upon completion of the verification and clarification process. This transition mechanism took into consideration the fact that the RCEP signatories have different tradition or preference in terms of scheduling approaches. For some RCEP signatories, such as Australia, New Zealand, and Japan, the negative list approach is the "norm" for their FTAs, while for others, in particular most ASEAN Members States and China, the positive list approach is their familiar practice. The latter group of economies apparently need more time to undertake the exercise of establishing "a negative list". The pragmatic arrangement under the RCEP suggests that the negative list as a tool to achieve higher levels of liberalization in services trade and investment and the challenges associated with this approach are generally recognized by governments.

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<sup>57</sup> The CPTPP signatories are Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore and Viet Nam.

<sup>58</sup> <https://ustr.gov/tpp/Summary-of-US-objectives>

<sup>59</sup> The ASEAN member states include: Indonesia, Malaysia, the Philippines, Brunei Darussalam, Singapore, Viet Nam, Cambodia, Lao People's Democratic Republic, Thailand and Myanmar.

<sup>60</sup> For the least developed economies (Cambodia, Lao People's Democratic Republic, and Myanmar), the transition period is up to 12 years.

## 4 Conclusion

This paper provides an overview of the scheduling approaches in 187 trade agreements notified under GATS Article V as of 30 April 2022. While overall the choice of scheduling approach is part of "negating tradition" and the GATS-type positive list remains preferred by most developing economies, the NAFTA-type negative list is gaining certain popularity, especially in recent FTAs including the mega FTAs with a large and diverse membership. Governments may sometimes adapt the choice of scheduling approach to FTA objectives and trading partners. Also, some governments seek to deviate from the standard GATS-type or NAFTA-type list and opt for a hybrid approach to take advantage of different liberalization modalities and accommodate various policy and regulatory considerations.

This paper analyses the differences between the positive and negative list approaches. We note that the scheduling approach is a key feature of services trade agreements. To a large extent, it defines the main design and legal structure of a services trade agreement, as it is not only about the way in which commitments are listed and formulated, but also related to the content and application of core obligations. Arguably, the negative list approach is more instrumental to achieve a higher level of liberalization in services trade and investment and guarantees better transparency of commitments, while the positive list approach provides more flexibility to governments in setting binding levels and is technically less challenging to cope with.

This paper also notes that the scheduling approach is essentially the means to achieve liberalization goals in services trade agreements and thus matter. Theoretically, both positive and negative list approaches can achieve high level of liberalization as long as governments are willing to open market. We however note in this paper that the scheduling approach is not a stand-alone technique. Rather, it is associated with the design and legal structure of a services trade agreement as well as different core obligations. In addition, establishing a positive or a negative list usually entails different negotiation dynamics and internal consultation processes. With FTAs as important trade policy instruments fast evolving and deepening, governments are becoming more flexible and more "innovative" in their use of scheduling approaches, including creating different hybrid patterns to accommodate their sensitivities in certain sectors, supplementing the positive list with a standstill requirement, or allowing transition from the positive list to the negative list. Governments' practices in FTAs would be inspiring for future services trade negotiations, be it bilateral, plurilateral, or multilateral.

## ANNEX 1

### List Of Trade Agreements Notified Under GATS Article V:7 (as of 30 April 2022)

RTA	Date of notification	Date of entry into force	Status
ASEAN - Australia - New Zealand	08-Apr-10	01-Jan-10	In Force
ASEAN - China	26-Jun-2008	01-Jul-2007	In Force
ASEAN - Hong Kong, China	10-Feb-21	11-Jun-19	In Force
ASEAN - India	20-Aug-2015	01-Jul-2015	In Force
ASEAN - Korea, Republic of	08-Jul-10	14-Oct-2010	In Force
Asia Pacific Trade Agreement (APTA)	17-Jun-2019	17-Sep-2013	In Force
Australia - Chile	03-Mar-09	06-Mar-09	In Force
Australia - China	26-Jan-16	20-Dec-15	In Force
Australia - New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)	22-Nov-1995	01-Jan-1989	In Force
Brunei Darussalam - Japan	31-Jul-08	31-Jul-08	In Force
Canada - Chile	30-Jul-97	05-Jul-97	In Force
Canada - Colombia	07-Oct-11	15-Aug-11	In Force
Canada - Honduras	05-Feb-15	01-Oct-14	In Force
Canada - Korea, Republic of	20-Jan-15	01-Jan-15	In Force
Canada - Panama	10-Apr-13	01-Apr-13	In Force
Canada - Peru	31-Jul-09	01-Aug-09	In Force
Caribbean Community and Common Market (CARICOM)	19-Feb-2003	04-Jul-2002	In Force
Chile - China	18-Nov-2010	01-Aug-2010	In Force
Chile - Colombia	14-Aug-09	08-May-09	In Force
Chile - Costa Rica (Chile - Central America)	16-Apr-02	15-Feb-02	In Force
Chile - El Salvador (Chile - Central America)	05-Feb-2004	01-Jun-02	In Force
Chile - Guatemala (Chile - Central America)	30-Mar-12	23-Mar-10	In Force
Chile - Honduras (Chile - Central America)	28-Nov-11	19-Jul-08	In Force
Chile - Japan	24-Aug-07	03-Sep-07	In Force
Chile - Mexico	27-Feb-01	01-Aug-99	In Force
Chile - Nicaragua (Chile - Central America)	14-Jun-13	19-Oct-12	In Force
Chile - Thailand	12-Sep-17	05-Nov-15	In Force
China - Costa Rica	27-Feb-12	01-Aug-11	In Force

RTA	Date of notification	Date of entry into force	Status
China - Georgia	05-Apr-18	01-Jan-18	In Force
China - Hong Kong, China	27-Dec-03	29-Jun-03	In Force
China - Korea, Republic of	01-Mar-16	20-Dec-15	In Force
China - Macao, China	27-Dec-03	17-Oct-03	In Force
China - Mauritius	05-Jan-21	01-Jan-21	In Force
China - New Zealand	21-Apr-09	01-Oct-08	In Force
China - Singapore	02-Mar-09	01-Jan-09	In Force
Colombia - Mexico	13-Sep-10	01-Jan-95	In Force
Colombia - Northern Triangle (El Salvador, Guatemala, Honduras)	31-Aug-12	12-Nov-09	In Force
Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)	20-Dec-18	30-Dec-18	In force for at least one Party
Costa Rica - Colombia	31-Oct-16	01-Aug-16	In Force
Costa Rica - Peru	05-Jun-13	01-Jun-13	In Force
Costa Rica - Singapore	16-Sep-13	01-Jul-13	In Force
Dominican Republic - Central America	06-Jan-12	04-Oct-01	In Force
Dominican Republic - Central America - United States Free Trade Agreement (CAFTA-DR)	17-Mar-06	01-Mar-06	In Force
East African Community (EAC)	01-Aug-2012	01-Jul-2010	In Force
EFTA - Central America (Costa Rica and Panama)	19-Nov-14	19-Aug-14	In Force
EFTA - Chile	03-Dec-04	01-Dec-04	In Force
EFTA - Colombia	14-Sep-11	01-Jul-11	In Force
EFTA - Ecuador	22-Feb-22	01-Nov-20	In Force
EFTA - Georgia	29-Aug-17	01-Sep-17	In Force
EFTA - Hong Kong, China	27-Sep-12	01-Oct-12	In Force
EFTA - Indonesia	26-Apr-22	01-Nov-21	In Force
EFTA - Korea, Republic of	23-Aug-06	01-Sep-06	In Force
EFTA - Mexico	25-Jul-01	01-Jul-01	In Force
EFTA - Philippines	26-Oct-18	01-Jun-18	In Force
EFTA - Singapore	14-Jan-03	01-Jan-03	In Force
EFTA - Türkiye	14-Feb-22	01-Oct-21	In Force
EFTA - Ukraine	18-Jun-12	01-Jun-12	In Force
El Salvador- Honduras - Chinese Taipei	06-Apr-10	01-Mar-08	In Force
EU - Albania	07-Oct-2009	01-Apr-2009	In Force
EU - Armenia	23-Aug-19	01-Jun-18	In Force
EU - Bosnia and Herzegovina	12-Jan-2016	01-Jun-2015	In Force
EU - Canada	19-Sep-17	21-Sep-17	In Force
EU - CARIFORUM States	16-Oct-08	29-Dec-08	In Force
EU - Central America	26-Feb-13	01-Aug-13	In Force

RTA	Date of notification	Date of entry into force	Status
EU - Chile	28-Oct-2005	01-Mar-2005	In Force
EU - Colombia and Peru	26-Feb-13	01-Mar-13	In Force
EU - Georgia	02-Jul-14	01-Sep-14	In Force
EU - Japan	14-Jan-19	01-Feb-19	In Force
EU - Korea, Republic of	07-Jul-11	01-Jul-11	In Force
EU - Mexico	21-Jun-2002	01-Oct-2000	In Force
EU - Moldova, Republic of	30-Jun-14	01-Sep-14	In Force
EU - Montenegro	18-Jun-2010	01-May-2010	In Force
EU - North Macedonia	02-Oct-2009	01-Apr-2004	In Force
EU - Serbia	20-Dec-2013	01-Sep-2013	In Force
EU - Singapore	01-Apr-20	21-Nov-19	In Force
EU - Ukraine	01-Jul-14	23-Apr-14	In Force
EU - United Kingdom	29-Jan-21	01-Jan-21	In Force
EU - Viet Nam	13-Jul-20	01-Aug-20	In Force
EU Treaty	10-Nov-1995	01-Jan-58	In Force
Eurasian Economic Union (EAEU)	12-Dec-14	01-Jan-15	In Force
Eurasian Economic Union (EAEU) - Viet Nam	04-May-17	05-Oct-16	In Force
European Economic Area (EEA)	13-Sep-96	01-Jan-94	In Force
European Free Trade Association (EFTA)	15-Jul-2002	01-Jun-2002	In Force
GUAM	03-Apr-17	10-Dec-03	In Force
Guatemala - Chinese Taipei	11-Jul-11	01-Jul-06	In Force
Gulf Cooperation Council (GCC) - Singapore	30-Jun-15	01-Sep-13	In Force
Hong Kong, China - Australia	17-Jan-20	17-Jan-20	In Force
Hong Kong, China - Chile	15-Oct-14	09-Oct-14	In Force
Hong Kong, China - Georgia	12-Feb-19	13-Feb-19	In Force
Hong Kong, China - Macao, China	18-Dec-17	27-Oct-17	In Force
Hong Kong, China - New Zealand	03-Jan-11	01-Jan-11	In Force
Iceland - China	10-Oct-14	01-Jul-14	In Force
Iceland - Faroe Islands	10-Jul-08	01-Nov-06	In Force
India - Japan	14-Sep-11	01-Aug-11	In Force
India - Malaysia	06-Sep-11	01-Jul-11	In Force
India - Mauritius	15-Apr-21	01-Apr-21	In Force
India - Singapore	03-May-07	01-Aug-05	In Force
Indonesia - Australia	27-Jan-21	05-Jul-20	In Force
Japan - Australia	12-Jan-15	15-Jan-15	In Force
Japan - Indonesia	27-Jun-08	01-Jul-08	In Force
Japan - Malaysia	12-Jul-06	13-Jul-06	In Force
Japan - Mexico	31-Mar-05	01-Apr-05	In Force
Japan - Mongolia	01-Jun-16	07-Jun-16	In Force
Japan - Peru	24-Feb-12	01-Mar-12	In Force

RTA	Date of notification	Date of entry into force	Status
Japan - Philippines	11-Dec-08	11-Dec-08	In Force
Japan - Singapore	08-Nov-02	30-Nov-02	In Force
Japan - Switzerland	01-Sep-09	01-Sep-09	In Force
Japan - Thailand	25-Oct-07	01-Nov-07	In Force
Japan - Viet Nam	01-Oct-09	01-Oct-09	In Force
Jordan - Singapore	07-Jul-06	22-Aug-05	In Force
Korea, Republic of - Australia	22-Dec-14	12-Dec-14	In Force
Korea, Republic of - Central America	15-Apr-21	01-Oct-19	In Force
Korea, Republic of - Chile	08-Apr-04	01-Apr-04	In Force
Korea, Republic of - Colombia	05-Oct-16	15-Jul-16	In Force
Korea, Republic of - India	01-Jul-10	01-Jan-10	In Force
Korea, Republic of - New Zealand	21-Dec-15	20-Dec-15	In Force
Korea, Republic of - Singapore	21-Feb-06	02-Mar-06	In Force
Korea, Republic of - Türkiye	21-Feb-2022	01-Aug-2018	In Force
Korea, Republic of - United States	15-Mar-12	15-Mar-12	In Force
Korea, Republic of - Viet Nam	02-Mar-16	20-Dec-15	In Force
Malaysia - Australia	13-May-13	01-Jan-13	In Force
Mexico - Central America	20-Jan-14	01-Sep-12	In Force
Mexico - Panama	06-Jun-16	01-Jul-15	In Force
Mexico - Uruguay	28-Jun-13	15-Jul-04	In Force
New Zealand - Chinese Taipei	25-Nov-13	01-Dec-13	In Force
New Zealand - Malaysia	07-Feb-12	01-Aug-10	In Force
New Zealand - Singapore	04-Sep-01	01-Jan-01	In Force
Nicaragua - Chinese Taipei	09-Jul-09	01-Jan-08	In Force
Pacific Agreement on Closer Economic Relations Plus (PACER Plus)	08-Apr-21	13-Dec-20	In force for at least one Party
Pacific Alliance	03-Nov-16	01-May-16	In Force
Pakistan - China	20-May-2010	10-Oct-2009	In Force
Pakistan - Malaysia	19-Feb-08	01-Jan-08	In Force
Panama - Chile	17-Apr-08	07-Mar-08	In Force
Panama - Chinese Taipei	28-Jul-09	01-Jan-04	In Force
Panama - Costa Rica (Panama - Central America)	07-Apr-09	23-Nov-08	In Force
Panama - El Salvador (Panama - Central America)	24-Feb-05	11-Apr-03	In Force
Panama - Guatemala (Panama - Central America)	22-Apr-13	20-Jun-09	In Force
Panama - Honduras (Panama - Central America)	16-Dec-09	09-Jan-09	In Force
Panama - Nicaragua (Panama - Central America)	25-Feb-13	21-Nov-09	In Force
Panama - Peru	23-Apr-12	01-May-12	In Force

RTA	Date of notification	Date of entry into force	Status
Panama - Singapore	04-Apr-07	24-Jul-06	In Force
Peru - Australia	24-Jun-20	11-Feb-20	In Force
Peru - Chile	29-Nov-11	01-Mar-09	In Force
Peru - China	03-Mar-10	01-Mar-10	In Force
Peru - Honduras	17-Oct-18	01-Jan-17	In Force
Peru - Korea, Republic of	09-Aug-11	01-Aug-11	In Force
Peru - Mexico	22-Feb-12	01-Feb-12	In Force
Peru - Singapore	30-Jul-09	01-Aug-09	In Force
Singapore - Australia	25-Sep-03	28-Jul-03	In Force
Singapore - Chinese Taipei	22-Apr-14	19-Apr-14	In Force
Southern Common Market (MERCOSUR)	05-Dec-2006	07-Dec-2005	In Force
Switzerland - China	30-Jun-14	01-Jul-14	In Force
Thailand - Australia	27-Dec-04	01-Jan-05	In Force
Thailand - New Zealand	01-Dec-05	01-Jul-05	In Force
Trans-Pacific Strategic Economic Partnership	18-May-07	28-May-06	In Force
Türkiye - Serbia	10-Jan-2022	01-Jun-2019	In Force
Türkiye - Singapore	14-Sep-18	01-Oct-17	In Force
Ukraine - Montenegro	25-Apr-13	01-Jan-13	In Force
United Kingdom - Albania	03-May-21	03-May-21	In Force
United Kingdom - Canada	29-Jun-2021	01-Apr-2021	In Force
United Kingdom - CARIFORUM States	31-Dec-20	01-Jan-21	In Force
United Kingdom - Central America	31-Dec-20	01-Jan-21	In Force
United Kingdom - Chile	31-Dec-20	01-Jan-21	In Force
United Kingdom - Colombia	31-Dec-20	01-Jan-21	In Force
United Kingdom - Ecuador and Peru	31-Dec-20	01-Jan-21	In Force
United Kingdom - Georgia	31-Dec-20	01-Jan-21	In Force
United Kingdom - Iceland, Liechtenstein and Norway	30-Nov-21	01-Dec-21	In force for at least one Party
United Kingdom - Japan	31-Dec-20	01-Jan-21	In Force
United Kingdom - Korea, Republic of	31-Dec-20	01-Jan-21	In Force
United Kingdom - Mexico	28-Jun-21	01-Jun-21	In Force
United Kingdom - Moldova, Republic of	31-Dec-20	01-Jan-21	In Force
United Kingdom - North Macedonia	31-Dec-20	01-Jan-21	In Force
United Kingdom - Serbia	18-May-21	20-May-21	In Force
United Kingdom - Singapore	31-Dec-20	01-Jan-21	In Force
United Kingdom - Ukraine	31-Dec-20	01-Jan-21	In Force
United Kingdom - Viet Nam	31-Dec-20	01-Jan-21	In Force
United States - Australia	22-Dec-04	01-Jan-05	In Force

RTA	Date of notification	Date of entry into force	Status
United States - Bahrain	08-Sep-06	01-Aug-06	In Force
United States - Chile	16-Dec-03	01-Jan-04	In Force
United States - Colombia	08-May-12	15-May-12	In Force
United States - Jordan	15-Jan-02	17-Dec-01	In Force
United States - Morocco	30-Dec-05	01-Jan-06	In Force
United States - Oman	30-Jan-09	01-Jan-09	In Force
United States - Panama	29-Oct-12	31-Oct-12	In Force
United States - Peru	03-Feb-09	01-Feb-09	In Force
United States - Singapore	17-Dec-03	01-Jan-04	In Force
United States-Mexico-Canada Agreement (USMCA/CUSMA/T-MEC)	16-Sep-20	01-Jul-20	In Force



## ANNEX 2 – LIST OF SERVICES TRADE AGREEMENTS BY SELECTED ECONOMIES

RTA Name	Date of entry into force	Notification year under GATS Art. V	Scheduling approach	Standstill/Ratchet Provisions
<b>AUSTRALIA</b>				
Australia - Indonesia	05-Jul-20	2021	Hybrid (Negative: Australia Positive: Indonesia Annex II)	Standstill & ratchet
Australia - Peru	11-Feb-20	2020	Negative	Standstill & ratchet
Australia - Hong Kong, China	17-Jan-20	2020	Hybrid (Overall Negative except for financial services for which market access commitments are on a positive list based)	Standstill & ratchet
Australia - China	20-Dec-15	2016	Hybrid (Negative: Australia Positive: China)	Investment: Standstill & ratchet
Australia - Japan	15-Jan-15	2015	Negative	Standstill & ratchet
Australia - Republic of Korea	12-Dec-14	2014	Negative	Standstill & ratchet
Australia - Malaysia	01-Jan-13	2013	Positive	-
Australia - Chile	06-Mar-09	2009	Negative	Standstill & ratchet
Australia - Thailand	01-Jan-05	2004	Positive	-
Australia - United States	01-Jan-05	2004	Negative	Standstill & ratchet
Australia - Singapore	28-Jul-03	2003	Negative	Standstill & ratchet
Australia - New Zealand	01-Jan-89	1995	Negative	-
ASEAN - Australia - New Zealand	01-Jan-10	2010	Positive	-
CPTPP	30-Dec-18	2018	Negative <sup>61</sup>	Standstill & ratchet
Pacific Agreement on Closer Economic Relations (PACER-Plus)	12-Dec-20		Positive	-
RCEP	01-January-22	N/A	Hybrid with positive lists transitioning to negative lists within certain period	Standstill & ratchet
<b>CANADA</b>				
Canada - EU	21-Sep-17	2017	Negative	Standstill & ratchet
Canada - Republic of Korea	01-Jan-15	2015	Negative	Standstill & ratchet
Canada - Honduras	01-Oct-14	2015	Negative	Standstill & ratchet
Canada - Panama	01-Apr-13	2013	Negative	Standstill & ratchet
Canada - Colombia	15-Aug-11	2011	Negative	Standstill & ratchet
Canada - Peru	01-Aug-09	2009	Negative	Standstill & ratchet
Canada - Chile	05-Jul-97	1997	Negative	Standstill & ratchet
CPTPP	30-Dec-18	2018	Negative	Standstill & ratchet
USMCA	01-Jul-20	2020	Negative	Standstill & ratchet
<b>CHILE</b>				
Chile - Hong Kong, China	09-Oct-14	2014	Positive	-
Chile - Nicaragua (Chile - Central America)	19-Oct-12	2013	Negative	Standstill & ratchet
Chile - Guatemala (Chile - Central America)	23-Mar-10	2012	Negative	Standstill & ratchet
Chile - Colombia	08-May-09	2009	Negative	Standstill & ratchet
Chile - Australia	06-Mar-09	2009	Negative	Standstill & ratchet
Chile - Peru	01-Mar-09	2011	Negative	Standstill & ratchet

<sup>61</sup> Except hybrid in financial services

RTA Name	Date of entry into force	Notification year under GATS Art. V	Scheduling approach	Standstill/Ratchet Provisions
Chile - Honduras (Chile - Central America)	19-Jul-08	2011	Negative	Standstill & ratchet
Chile - Panama	07-Mar-08	2008	Negative	Standstill & ratchet
Chile - Japan	03-Sep-07	2007	Negative	Standstill & ratchet
Chile - China	01-Aug-10	2010	Positive	-
Chile - EFTA	01-Dec-04	2004	Positive: Services Negative: Investment excluding services	-
Chile - Republic of Korea	01-Apr-04	2004	Positive	-
Chile - United States	01-Jan-04	2003	Negative	Standstill & ratchet
Chile - EU	01-Mar-05	2005	Positive	
Chile - El Salvador (Chile - Central America)	01-Jun-02	2004	Negative	Standstill & ratchet
Chile - Costa Rica (Chile - Central America)	15-Feb-02	2002	Negative	Standstill & ratchet
Chile - Mexico	01-Aug-99	2001	Negative	Standstill & ratchet
Chile - Canada	05-Jul-97	1997	Negative	Standstill & ratchet
Chile - Thailand	05-Nov-15	2017	Positive	-
Trans-Pacific Strategic Economic Partnership	28-May-06	2007	Negative	Standstill & ratchet
Pacific Alliance	01-May-16	2016	Negative	Standstill & ratchet
<b>CHINA</b>				
China - Mauritius	01-Jan-21	2021	Positive	
China - Georgia	01-Jan-18	2018	Positive	
China - Australia	20-Dec-15	2016	Hybrid (Negative: Australia; Positive: China)	Investment: Standstill & ratchet
China - Republic of Korea	20-Dec-15	2016	Positive	-
China - Iceland	01-Jul-14	2014	Positive	-
China - Switzerland	01-Jul-14	2014	Positive	-
China - Costa Rica	01-Aug-11	2012	Positive	-
China - Peru	01-Mar-10	2010	Positive	-
China - Singapore	01-Jan-09	2009	Positive	-
China - New Zealand	01-Oct-08	2009	Positive	-
China - Pakistan	10-Oct-09	2010	Positive	
China - Chile	01-Aug-10	2010	Positive	-
China - ASEAN	01-Jul-07	2008	Positive	-
China - Macao, China	17-Oct-03	2003	Positive	
China - Hong Kong, China	29-Jun-03	2003	Positive	
Asia Pacific Trade Agreement (APTA)	13-Sep-13	2019	Positive, schedules to be incorporated	-
The Cross-Straits Economic Cooperation Framework Agreement (ECFA)	12-Sep-10	Not notified	Positive	-
RCEP	01-Jan-2022	N/A	Hybrid with positive lists transitioning to negative lists within a period	Standstill & ratchet
<b>COSTA RICA</b>				
Costa Rica - Chile	15-Feb-02	2002	Negative	Standstill & ratchet
Costa Rica - China	01-Aug-11	2012	Positive	-
Costa Rica - Colombia	01-Aug-16	2016	Negative	Standstill & ratchet
Costa Rica - Peru	01-Jun-13	2013	Negative	Standstill & ratchet
Costa Rica - Singapore	01-Jul-13	2013	Negative	Standstill & ratchet
Costa Rica - Panama (Panama - Central America)	23-Nov-08	2009	Negative	Standstill & ratchet
EFTA - Central America (Costa Rica, Guatemala and Panama)	19-Aug-14	2014	Positive: Services Negative: Investment excluding services	-

RTA Name	Date of entry into force	Notification year under GATS Art. V	Scheduling approach	Standstill/Ratchet Provisions
<b>EFTA and its member states</b>				
EFTA - Indonesia	01-Nov-21	2022	Positive: Services Negative: Investment excluding services	-
EFTA - Ecuador	01-Nov-20	2022	Positive	-
EFTA - Türkiye	01-Oct-21	2022	Positive	-
EFTA – the Philippines	01-Jun-18 <sup>62</sup>	2018	Positive	-
EFTA – Georgia	01-Sep-17	2017	Positive: Services Negative: Investment excluding services	-
EFTA - Central America (Costa Rica, Guatemala and Panama)	19-Aug-14	2014	Positive: Services Negative: Investment excluding services	-
EFTA - Gulf Cooperation Council (GCC)	01-Jul-14	Not notified	Positive	-
EFTA - Hong Kong, China	01-Oct-12	2012	Negative	Standstill + ratchet
EFTA - Ukraine	01-Jun-12	2012	Positive: Services Negative: Investment excluding services	-
EFTA - Colombia	01-Jul-11	2011	Positive: Services Negative: Investment excluding services	-
EFTA - Republic of Korea	01-Sep-06	2006	Positive	-
EFTA - Chile	01-Dec-04	2004	Positive: Services Negative: Investment excluding services	-
EFTA - Singapore	01-Jan-03	2003	Positive: Services Negative: Investment excluding services	-
EFTA – Mexico	01-Jul-01	2001	Hybrid No services schedule yet; reservations on financial services only.	Standstill Financial services: standstill + ratchet
Iceland - China	01-Jul-14	2014	Positive	-
Iceland-Liechtenstein-Norway - UK	01-Dec-21	2021	Negative	Standstill + ratchet
Switzerland - China	01-Jul-14	2014	Positive	-
Switzerland - Japan	01-Sep-09	2009	Negative	Standstill
<b>EUROPEAN UNION</b>				
EU – United Kingdom	01-Jan-21	2021	Negative	Standstill + ratchet
EU - Singapore	21-Nov-19	2020	Positive	-
EU - Viet Nam	01-Aug-20	2020	Positive	-
EU - Japan	01-Feb-19	2019	Negative	Standstill + ratchet
EU - Armenia	01-Jun-18	2019	Hybrid (Positive: Cross-border trade in services Negative: Investment)	Standstill for investment
EU - Canada	21-Sep-17	2017	Negative	Standstill + ratchet
EU - Georgia	01-Sep-14	2014	Hybrid (Positive: Cross-border trade in services Negative: Investment)	Standstill for investment
EU - Republic of Moldova	01-Sep-14	2014	Hybrid (Positive: Cross-border trade in services Negative: Investment)	Standstill for investment
EU - Ukraine	23-Apr-14	2014	Hybrid	Standstill for investment

<sup>62</sup> The entry in to force for Iceland: 1 January 2020

RTA Name	Date of entry into force	Notification year under GATS Art. V	Scheduling approach	Standstill/Ratchet Provisions
			(Positive: Cross-border trade in services Negative: Investment)	
EU - Central America	01-Aug-13 <sup>63</sup>	2013	Positive	-
EU - Colombia, Peru and Ecuador	01-Mar-13 <sup>64</sup>	2013	Positive	-
EU - Republic of Korea	01-Jul-11	2011	Positive	Standstill
EU - CARIFORUM States EPA	29-Dec-08	2008	Positive	-
EU - Chile <sup>65</sup>	01-Mar-05	2005	Positive	-
EU - Mexico Modernized EU-Mexico <sup>66</sup>	01-Oct-00	2002	Positive Negative	Standstill + ratchet
<b>INDIA</b>				
India - ASEAN	01-Jul-15	2015	Positive	-
India - Japan	01-Aug-11	2011	Hybrid (Positive: Trade in services Negative: Investment including services)	Investment: Ratchet
India - Malaysia	01-Jul-11	2011	Positive	-
India - Mauritius	01-Apr-21	2021	Positive	-
India - Singapore	01-Aug-05	2007	Positive	-
<b>JAPAN</b>				
Japan - UK	01-Jan-21	2020	Negative	Standstill + ratchet
Japan - EU	01-Feb-19	2019	Negative	Standstill + ratchet
Japan - Mongolia	07-Jun-16	2016	Hybrid (Positive: Trade in services Negative: Investment including services)	Investment: Standstill & ratchet
Japan - Australia	15-Jan-15	2015	Negative	Standstill + ratchet
Japan - Peru	01-Mar-12	2012	Negative	Standstill + ratchet
Japan - India	01-Aug-11	2011	Hybrid (Positive: Trade in services Negative: Investment including services)	Investment: Standstill & ratchet
Japan - Viet Nam	01-Oct-09	2009	Positive	-
Japan - Switzerland	01-Sep-09	2009	Negative	Standstill
Japan - Philippines	11-Dec-08	2008	Hybrid (Positive: Trade in services Negative: Investment including services)	Investment: Standstill & ratchet
Japan - ASEAN	01-Dec-08	2009	Positive	-
Japan - Brunei Darussalam	31-Jul-08	2008	Hybrid (Positive: Trade in services Negative: Investment including services)	Investment: Standstill & ratchet
Japan - Indonesia	01-Jul-08	2008	Hybrid	

<sup>63</sup> The trade pillar of the Association Agreement has been provisionally applied since 1st August 2013 with Honduras, Nicaragua and Panama, since 1st October 2013 with Costa Rica and El Salvador, and since 1 December with Guatemala.

<sup>64</sup> The agreement has been provisionally applied with Peru since 1 March 2013 and with Colombia since 1 August 2013. On 1 January 2017, Ecuador joined the trade agreement.

<sup>65</sup> The EU and Chile started the negotiation process for the modernisation of the EU – Chile Association Agreement in 2017. The negotiations were technically concluded in October 2021.

<sup>66</sup> The EU and Mexico reached a modernised agreement on 21 April 2018 and supplemented with the agreement on public procurement on 28 April 2020. The modernised EU-Mexico agreement will replace the previous EU-Mexico Global Agreement once in force.

RTA Name	Date of entry into force	Notification year under GATS Art. V	Scheduling approach	Standstill/Ratchet Provisions
			(Positive: Trade in services Negative: Investment including services)	Investment: Standstill & ratchet
Japan - Thailand	01-Nov-07	2007	Positive	-
Japan - Chile	03-Sep-07	2007	Negative	Standstill + ratchet
Japan - Malaysia	13-Jul-06	2006	Hybrid (Positive: Trade in services Negative: Investment including services)	Investment: Standstill & ratchet
Japan - Mexico	01-Apr-05	2005	Negative	Standstill + ratchet
Japan - Singapore	30-Nov-02	2002	Hybrid (Positive: Trade in services Negative: Investment including services)	Investment: Standstill & ratchet
CPTPP	30-Dec-18	2018	Negative	Standstill & ratchet
RCEP	01-Jan-2022	N/A	Hybrid with positive lists transitioning to negative lists within certain period	Standstill & ratchet
<b>MEXICO</b>				
Mexico - Panama	01-Jul-15	2016	Negative	Standstill & ratchet
Mexico - Central America	01-Sep-12	2014	Negative	Standstill & ratchet
Mexico - Peru	01-Feb-12	2012	Hybrid: Positive: market access for cross-border trade in services Negative: other	Standstill & ratchet
Mexico - Japan	01-Apr-05	2005	Negative	Standstill & ratchet
Mexico - Uruguay	15-Jul-04	2013	Negative	Standstill & ratchet
Mexico - EFTA	01-Jul-01	2001	Negative	Standstill & ratchet
Mexico - EU	01-Oct-00	2002	Negative	Standstill & ratchet
Mexico - Chile	01-Aug-99	2001	Negative	Standstill & ratchet
Mexico - Colombia	01-Jan-95	2010	Negative	Standstill & ratchet
Pacific Alliance	01-May-16	2016	Negative	Standstill & ratchet
United States-Mexico-Canada Agreement (USMCA)	01-Jul-20	2020	Negative	Standstill & ratchet
<b>MOROCCO</b>				
Morocco - United States	01-Jan-2006	2005	Negative	Ratchet
<b>MAURITIUS</b>				
Mauritius - China	01-Jan-2021	2021	Positive	-
<b>NEW ZEALAND</b>				
New Zealand - Australia	01-Jan-89	1995	Negative	Standstill & ratchet
New Zealand - Republic of Korea	20-Dec-15	2015	Negative	Standstill & ratchet
New Zealand - Chinese Taipei	01-Dec-13	2013	Negative	Standstill & ratchet
New Zealand - Hong Kong, China	01-Jan-11	2011	Negative	Standstill & ratchet
New Zealand - Malaysia	01-Aug-10	2012	Positive	-
ASEAN - Australia - New Zealand	01-Jan-10	2010	Positive	-
New Zealand - China	01-Oct-08	2009	Positive	-
New Zealand - Thailand	01-Jul-05	2005	Positive	-
New Zealand - Singapore	01-Jan-01	2001	Hybrid (Positive: Trade in services)	-

RTA Name	Date of entry into force	Notification year under GATS Art. V	Scheduling approach	Standstill/Ratchet Provisions
			Negative: Investment)	
TPP	28-May-06	2007	Negative	Standstill & ratchet
CPTPP	30-Dec-18	2018	Negative	Standstill & ratchet
Pacific Agreement on Closer Economic Relations (PACER-Plus)	12-Dec-20		Positive	-
RCEP	01-Jan-2022	N/A	Hybrid with positive lists transitioning to negative lists within a period	Standstill & ratchet
<b>PANAMA</b>				
Panama - Chile	07-Mar-08	2008	Negative	Standstill & ratchet
Panama - Chinese Taipei	01-Jan-04	2009	Negative	Standstill & ratchet
Panama - Costa Rica (Panama - Central America)	23-Nov-08	2009	Negative	Standstill & ratchet
Panama - El Salvador (Panama - Central America)	11-Apr-03	2005	Negative	Standstill & ratchet
Panama - Guatemala (Panama - Central America)	20-Jun-09	2013	Negative	Standstill & ratchet
Panama - Honduras (Panama - Central America)	09-Jan-09	2009	Negative	Standstill & ratchet
Panama - Nicaragua (Panama - Central America)	21-Nov-09	2013	Negative	Standstill & ratchet
Panama - Peru	01-May-12	2012	Negative	Standstill & ratchet
Panama - Singapore	24-Jul-06	2007	Negative	Standstill & ratchet
<b>PERU</b>				
Peru - Canada	01-Aug-09	2009	Negative	Standstill & ratchet
Peru - Costa Rica	01-Jun-13	2013	Negative	Standstill & ratchet
Colombia and Peru - EU	01-Mar-13	2013	Positive	-
Peru - Japan	01-Mar-12	2012	Negative	Standstill & ratchet
Peru - Panama	01-May-12	2012	Negative	Standstill & ratchet
Peru - Australia	11-Feb-20	2020	Negative	Standstill & ratchet
Peru - Chile	1-Mar-09	2011	Negative	Standstill & ratchet
Peru - China	01-Mar-10	2010	Positive	-
Peru - Honduras	01-Jan-17	2018	Negative	Standstill & ratchet
Peru - Korea, Republic of	01-Aug-11	2011	Negative	Standstill & ratchet
Peru - Mexico	01-Feb-12	2012	Hybrid: Positive: market access for cross-border trade in services Negative: other	Standstill & ratchet
Peru - Singapore	01-Aug-09	2009	Negative	Standstill & ratchet
Peru - Ecuador - United Kingdom	01-Jan-21	2020	Positive	-
Peru - United States	03-Feb-09	2009	Negative	-
<b>SINGAPORE</b>				
Singapore - UK	11-Feb-21	2020	Positive	-
Singapore - EU	21-Nov-19	2020	Positive	-
Singapore - Türkiye	01-Oct-17	2018	Negative	Standstill & ratchet
Singapore - Chinese Taipei	19-Apr-14	2014	Negative	Standstill & ratchet
Singapore - Gulf Cooperation Council (GCC)	01-Sep-13	2015	Positive	-
Singapore - Costa Rica	01-Jul-13	2013	Negative	Standstill & ratchet
Singapore - Peru	01-Aug-09	2009	Negative	Standstill & ratchet
Singapore - China	01-Jan-09	2009	Positive	
Singapore - Panama	24-Jul-06	2007	Negative	Standstill & ratchet
Singapore - Republic of Korea	02-Mar-06	2006	Negative, except for financial services which are positively listed	Standstill & ratchet

RTA Name	Date of entry into force	Notification year under GATS Art. V	Scheduling approach	Standstill/Ratchet Provisions
Singapore - Jordan	22-Aug-05	2006	Positive	-
Singapore - India	01-Aug-05	2007	Positive	-
Singapore - United States	01-Jan-04	2003	Negative	Standstill & ratchet
Singapore - Australia	28-Jul-03	2003	Negative	Standstill & ratchet
Singapore - EFTA	01-Jan-03	2003	Positive	-
Singapore - Japan	30-Nov-02	2002	Positive	-
Singapore - New Zealand	01-Jan-01	2001	Hybrid (Positive: Trade in services Negative: Investment)	-
Singapore - Sri Lanka	01-May-18	Not notified	Positive	Standstill
ASEAN - India	01-Jul-15	2015	Positive	-
ASEAN - Republic of Korea	14-Oct-10	2010	Positive	-
ASEAN-Australia-New Zealand	01-Jan-10	2010	Positive	-
ASEAN - China	01-Jul-07	2008	Positive	-
Trans-Pacific Strategic Economic Partnership (TPP)	28-May-06	2007	Negative	Standstill & ratchet
CPTPP	30-Dec-18	2018	Negative	Standstill & ratchet
RCEP	01-Jan-22		Hybrid with positive lists transitioning to negative lists within certain period	
<b>UNITED STATES</b>				
United States - Australia	01-Jan-05	2004	Negative	Standstill & ratchet
United States - Bahrain	01-Aug-06	2006	Negative	Standstill & ratchet
United States - Central America - Dominican Republic			Negative	Standstill & ratchet
United States - Chile	01-Jan-04	2003	Negative	Standstill & ratchet
United States - Colombia	15-May-12	2012	Negative	Standstill & ratchet
United States - Jordan	17-Dec-01	2002	Positive	-
United States - Morocco	01-Jan-06	2005	Negative	Standstill & ratchet
United States - Oman	01-Jan-09	2009	Negative	Standstill & ratchet
United States - Panama	31-Oct-12	2012	Negative	Standstill & ratchet
United States - Peru	01-Feb-09	2009	Negative	Standstill & ratchet
United States - Singapore	01-Jan-04	2003	Negative	Standstill & ratchet
United States - Republic of Korea	15-March-12	2012	Negative	Standstill & ratchet
United States - Mexico - Canada Agreement	01-Jul-20	2020	Negative	Standstill & ratchet
<b>VIET NAM</b>				
Viet Nam - United Kingdom	01-Jan-21	2020	Positive	-
Viet Nam - EU	01-Aug-20	2020	Positive	-
Viet Nam - Eurasian Economic Union (EAEU)	05-Oct-16	2017	Hybrid (Positive: Trade in services except mode 3 Negative: investment including services)	-
Viet Nam - Republic of Korea	20-Dec-15	2016	Positive	-
Viet Nam - Japan	01-Oct-09	2009	Positive	-
ASEAN - Australia-New Zealand	01-Jan-10	2010	Positive	-
ASEAN - Hong Kong, China	11-Jun-19	2021	Positive	-
ASEAN - Republic of Korea	14-Oct-10	2010	Positive	-
ASEAN - India	01-Jul-15	2015	Positive	-
ASEAN - China	01-Jul-07	2008	Positive	-
CPTPP	30-Dec-18	2018	Negative	Standstill & ratchet

RTA Name	Date of entry into force	Notification year under GATS Art. V	Scheduling approach	Standstill/Ratchet Provisions
RCEP	01-Jan-22		Hybrid with positive lists transitioning to negative lists within certain period	

Source: WTO Secretariat. Further information on these Agreements and on specific dates of entry into force/provisional applications may be found in the WTO Database on RTAs: <http://rtais.wto.org>