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## Services liberalization in the new generation of Preferential Trade Agreements (PTAs): How much further than the GATS?

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**World Trade Organization**  
Economic Research and Statistics Division

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**Services Liberalization in the New Generation of  
Preferential Trade Agreements (PTAs):  
How Much Further than the GATS?**

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## **ABSTRACT**

*This paper attempts to fill a gap in the trade literature by providing a comprehensive overview of services liberalization commitments in the new generation of preferential trade agreements (PTAs) as compared to prevailing GATS commitments and Doha Round offers. By developing a new database, the paper reviews the commitments undertaken by 29 WTO Members (counting the EC as one) under mode 1 (cross-border supply) and mode 3 (commercial presence) in 28 PTAs negotiated since 2000. The paper presents a general analysis from both a cross-country and cross-sector perspectives, and also examines in more detail the GATS+ commitments undertaken in a number of key sectors (audiovisual, distribution, education, financial, professional, and telecommunication services). The paper also discusses the potential economic costs arising from these preferential agreements, as well as the potential implications for the multilateral trading system, and for the Doha round of negotiations in particular. The paper concludes by discussing possible approaches to overcome the potential downsides of PTAs, including proposals for a more pro-active role for the WTO in the surveillance of these agreements.*

Keywords: GATS, trade in services, regionalism, preferential trade agreements.

JEL classification: F10, F13, L8, F2

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## Abbreviations

### Country Abbreviations in Charts 1 and 2:

AUS: Australia  
BHR: Bahrain  
CHL: Chile  
CHN: China  
COL: Colombia  
CR: Costa Rica  
DR: Dominican Republic  
EC: European Communities (15)  
ELS: El Salvador  
GUA: Guatemala  
HND: Honduras  
ICE: Iceland  
IND: India  
JAP: Japan  
KOR: Republic of Korea  
LIE: Liechtenstein  
MAL: Malaysia  
MEX: Mexico  
MOR: Morocco  
NZ: New Zealand  
NIC: Nicaragua  
NOR: Norway  
OMN: Oman  
PAN: Panama  
PER: Peru  
SGP: Singapore  
SWI: Switzerland  
THA: Thailand  
US: United States

### Sector Abbreviations for Chart 4:

Prof.: Professional services  
Comp.: Computer-related services  
Postal: Postal and Courier services  
Tel.: Telecommunication services  
AV: Audiovisual services  
Const.: Construction services  
Dist.: Distribution services  
Educ.: Education services  
Env.: Environmental services  
Insur.: Insurance and insurance-related services  
Bank: Banking and other financial services (excluding insurance)  
Health: Health and social services  
Tourism: Tourism and travel-related services  
Entert.: Recreational, cultural and sporting services  
Maritime: Maritime transport services and auxiliary maritime services  
Air: Air transport services (as per GATS Annex on Air transport)  
Rail: Rail transport services  
Road: Road transport services  
Aux. trans.: Auxiliary transport services

## INTRODUCTION

The suspension last July of the WTO Doha Round has raised the intensity of calls for shifting priorities to the negotiation of preferential trade agreements (PTAs), but has similarly spurred heightened concerns about such course of action.<sup>1</sup> Unlike in any other period since the establishment of the multilateral trading system, all important trading nations are involved in PTA discussions of one form or another.

In the midst of the recent flurry of PTA activity, this paper attempts to fill a gap in the literature by providing a comprehensive evaluation of the liberalization commitments contained in the recent wave of preferential trade agreements on services. Indeed, the trade literature has tended to limit its examination of services components of preferential trade agreements (PTAs) to the type of rules they contain and to such other characteristics as whether a GATS-type positive listing or NAFTA-type negative listing were used in undertaking commitments.

The paper hopes to make a contribution at the empirical level by comparing the commitments undertaken in PTAs with prevailing GATS commitments, as well as offers in the ongoing Doha Round negotiations so as to assess how much further access is granted under PTAs. The review of recent services PTAs should help shed light on some basic questions: do PTA commitments go further than existing GATS commitments and GATS offers and if so to what extent? What types of PTAs appear to encourage more liberalization (in terms of scheduling approaches, countries involved, etc.)? Do certain countries appear to obtain better commitments than others in their PTAs? In what sectors are improvements more or less significant, and what types of improvements over GATS are provided? Do Members undertake different commitments in different PTAs? Do PTAs encourage actual liberalization, i.e., going beyond the status quo? Providing elements of answers to these

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<sup>1</sup> See, for example: Pascal Lamy, "What now, Trade Ministers?", International Herald Tribune, 28 July 2006; Financial Times, "The Pointlessness of partial trade pacts", 16 August 2006; Fred Bergsten, "Plan B for World Trade: Go Regional", Financial Times, 16 August 2006; Agence France Presse, "IMF Chief Warns Against Patchwork Trade Deals", 31 July 2006; Financial Post, "Canada Must Deal with Trade Bilaterally", 31 July 2006; La Tribune, "L'UE tentée par des accords bilatéraux", 3 August 2006; Financial Express, "Doha Collapse: Govt to Pursue Bilateral Talks", 31 July 2006; WTO Reporter, "Brazil Tries to Remain Upbeat on Doha Talks, While Business Clamours for Bilateral Accords", 31 July 2006; WTO (2005), "The Future of the WTO: Addressing Institutional Challenges in the New Millennium", Report by the Consultative Board to the WTO Director-General Supachai Panitchpakdi.

questions should, in addition, allow for informed reflections on policy implications of these PTAs, including for the Doha services negotiations and the multilateral system more generally.<sup>2</sup>

The paper is structured as follows. Part I presents the results of our research to provide an overall picture of GATS+ commitments undertaken in the recent wave of PTAs. The paper reviews the commitments undertaken by 29 countries<sup>3</sup> under mode 1 (cross-border supply) and mode 3 (commercial presence) in 28 PTAs with services commitments that have been concluded since 2000. The paper assesses the gap between, on the one hand, PTAs' services commitments and, on the other hand, services commitments offered in the Doha negotiations. The 'value-added' of PTAs is highlighted, among other things, by examining, for each country, the proportion of all services activities that are subject of improved and new commitments in PTAs compared to GATS offers.

Part II of the paper examines in more detail the content - or depth - of the new or improved commitments in PTAs by focusing on a number of sectors. The paper concludes by summarizing the main findings and making certain observations on economic consequences and on the possible impact of those preferential arrangements on the Doha services negotiations and on the multilateral trading system. We also suggest, in conclusion, some avenues to limit the potential downsides of this phenomenon.

## **PART I: ASSESSING AND COMPARING LIBERALIZATION COMMITMENTS OF PTAs: AN OVERVIEW**

### **A. The Context**

#### *(i) Proliferation of Services PTAs*

As often pointed out, the number of preferential trade agreements has increased at a great and steady pace since the establishment of the WTO in 1995. Apart from Mongolia, all Members are party to a PTA of one form or another. As of 15 June 2006, 197 PTAs in force had been notified to the GATT/WTO since 1947 under either GATT Article XXIV, the

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<sup>2</sup> The paper does not seek to provide a legal evaluation of PTA commitments or to assess whether GATS Article V criteria for preferential trade agreements have been met.

Enabling Clause, or GATS Article V. 106 of these agreements have been notified since 2000, including 80 since 2002, i.e., concurrently with the Doha Round negotiations.<sup>4</sup>

PTAs encompassing services are more novel. Since trade rules on services are a more recent phenomenon (the Canada-US free trade agreement in 1989 and the GATS in 1995 were key precursors), it is understandable that only 36 new PTAs have been notified under GATS Article V. However, notifications for services agreements have grown at a faster pace than others: 29 of these agreements (more than ¾) have been notified since the start of the WTO services negotiations in 2000, of which 10 were in 2005-2006 and 12 in 2003-2004, during key phases of the Doha Round. Various other agreements have recently been tentatively concluded, but are awaiting ratification (e.g., US agreements with Peru and Colombia). Others have recently entered into force but have not yet been notified (e.g., Mercosur). Still more are currently under negotiation or consideration, with varying prospects for completion, e.g., Japan-Philippines, US-Malaysia, US-Korea.

Since 2000 key traditional *demandeurs* in the services negotiations, such as the United States, the EC and Japan have, for the first time, engaged into (services) PTAs beyond their most immediate neighbours (i.e., Mexico and Canada for the US, other European countries for the EC). Other key players – including many developing countries – have followed suit, e.g., India, China, Australia, New Zealand, Chile, Mexico, India, Hong Kong, Switzerland, Norway, Thailand, Malaysia, Korea, Singapore.<sup>5</sup> As a result, so far, many of the most important advocates of liberalization in the multilateral services negotiations are involved in services PTAs. Governments that are parties to these agreements account for more than 80% of world services trade.<sup>6</sup> Key absentees in this group include Brazil and Argentina (when excluding the Mercosur agreement, which has not been notified), such Asian WTO Members as the Philippines, Indonesia, Chinese Taipei and Pakistan, and such larger African countries as South Africa or Egypt (Morocco is the only African country involved in this web of agreements). Of course, the countries involved in these PTAs do not all have agreements amongst themselves. Services trade relations among larger players tend

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<sup>3</sup> Counting the European Communities (15) as one.

<sup>4</sup> Jo-Ann Crawford and Roberto V. Fiorentino (2005), The Changing Landscape of Regional Trade Agreements, WTO Discussion Paper No. 8. See also information on PTA notifications on the WTO website: [http://www.wto.org/english/tratop\\_e/region\\_e/region\\_e.htm](http://www.wto.org/english/tratop_e/region_e/region_e.htm)

<sup>5</sup> Canada, also, had engaged in services PTAs before 2000, if not since then: with the US and Mexico, and with Chile.

to still be governed by WTO commitments: the US, China, India, Japan, or the EC have no PTA ties amongst themselves.

Another apparent feature of the recent wave of services agreements is that they most often bring together developing and developed countries. The US-Australia PTA is the only one between developed countries since 2000. Agreements between developing economies are more common, e.g., the agreements signed by Mexico and Chile with Central American countries (between developing countries). In general, trade agreements involving at least one developed country tend to include services components (exceptions include agreements notified by the EC with African and Middle Eastern countries), while the majority of trade agreements between developing countries include no services commitments, although that trend seems to now be changing.

It can also be observed that certain countries seem to have played a particularly important role in the spreading of services PTAs, if only by the number of agreements that they have signed: the US, Singapore, and Chile are party to more than five services PTAs.

(ii) *Differing Approaches to Trade Rules for Services in PTAs*

In assessing and comparing liberalization commitments undertaken in the recent wave of PTAs, this paper goes through agreements that are based on varying approaches to regulating services trade. While the liberalization commitments of services PTAs have not in the past been the subject of comprehensive assessments, other characteristics of services obligations contained in PTAs have in contrast been discussed extensively.

A key element that distinguishes many services PTAs is the approach to liberalization: traditionally, distinctions have been drawn on the basis of whether they followed a GATS-type or a NAFTA-type approach. The main difference between the two is that the NAFTA is based on a negative-list scheduling modality: everything is liberalized, unless otherwise indicated through lists of reservations. Reservations are typically for existing non-conforming measures (Annex 1) and for future measures (Annex 2). These agreements provide a high degree of transparency since, save for the normally limited

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<sup>6</sup> With BOP commercial services trade statistics and taking into account solely extra-EU (25) trade.

number of Annex 2 reservations, the actual level of openness is spelled out, along with an indication of the legal/regulatory framework in place. This is in contrast to the GATS, which adopts a positive-list modality whereby the liberalization obligations only apply to the sectors listed, which themselves are subject to limitations or conditions inscribed. Nothing specifies whether these limitations are for existing non-conforming measures or for future measures. Moreover, since only "measures" are bound, no indication is given of the relevant laws/regulations, which accentuates the lack of transparency. Unlike the GATS, agreements using a negative list approach typically include a ratchet mechanism whereby any future liberalization of annex 1-type reservations is automatically locked in.<sup>7</sup>

The NAFTA-type and GATS-type agreements also differ in that, in the former, different modes of supply are dealt with in different chapters: disciplines for modes 1, 2 and 4 in a chapter on cross-border trade in services and disciplines relating to mode 3 as part of a chapter on investment for services and non-services activities. Further provisions on temporary movement of natural persons are also typically found in an additional chapter. That modes of supply be covered by different chapters makes no meaningful difference if obligations in these chapters are the same. However, that is not always the case. While both NAFTA's cross-border services and investment chapters each contain a national treatment obligation, neither contains a market access obligation as found in Article XVI of the GATS for certain non-discriminatory quantitative restrictions. NAFTA's cross-border services chapter contains a provision on non-discriminatory quantitative restrictions that is merely of a best endeavours' basis. Investment chapters, which cover commercial presence in services, also do not include disciplines on non-discriminatory quantitative restrictions. In that regard, the GATS therefore goes further.<sup>8</sup> Apart from liberalization provisions, it also goes beyond GATS by subjecting mode 3 to services-wide disciplines such as domestic regulation, but NAFTA-type agreements exceed GATS-type agreements by subjecting investment in services (including mode 3) to extensive investment provisions, such as on expropriation, minimum standard of treatment, and investor-state dispute settlements procedures.

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<sup>7</sup> For further details, see: OECD (2002), The Relationship Between Regional Trade Agreements and the Multilateral Trading System: Services, Paris; Sherry Stephenson (2002), Regional Versus Multilateral Liberalisation of Services, *World Trade Review*, Vol. 1, No. 2, pp. 187-209.

<sup>8</sup> See OECD (2002), op. cit.; Martin Roy (2003), "Implications for the GATS of Negotiations on a Multilateral Investment Framework; Potential Synergies and Pitfalls", *Journal of World Investment*, Vol. 4, No. 6, pp. 963-986.

While various PTAs still follow either the NAFTA or GATS structure (e.g., the agreements involving the European Communities and EFTA follow a GATS model), a number of the PTAs reviewed in this paper have evolved into a combination of the two approaches. The aim being to achieve greater coherence between services and investment disciplines so as to avoid discrepancies in the treatment of investment in goods and services or in the treatment of trade in services under different modes of supply. Combined approaches therefore seek to ensure that services trade under all modes of supply are subject to the same disciplines and that mode 3 is covered by generic investment disciplines.<sup>9</sup> In such cases, mode 3 is typically covered by both the investment chapter and the services chapter. It is subject to the services chapter's disciplines on non-discriminatory quantitative restrictions, as in GATS, but, in addition to GATS, it is subject generic investment disciplines. A number of the services PTAs reviewed in this paper have adopted variants of such a combined approach. All the PTAs involving the United States reviewed in this paper have followed this structure, as well as the Australia-Singapore and, to some extent, the Japan-Singapore PTAs.<sup>10</sup> Further details are found in Table 1, which provides information on the characteristics of the agreements reviewed in this paper. In that table, the so-called combined models are those that use a negative-list scheduling modality (like NAFTA-type agreements) and that include a GATS-type market access obligation for mode 3.<sup>11</sup>

Another notable difference in terms of liberalization modalities between GATS-type and NAFTA-type or combined models relates to air transport. While services chapters of the PTAs reviewed typically carve-out key air transport services (at times along similar lines as GATS and sometimes providing for even less coverage), the investment chapters of relevant PTAs, where national treatment applies to mode 3, do not exclude any particular service sector and therefore apply to all air transport services as to any other sector, subject of course to specific reservations listed in relevant annexes.

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<sup>9</sup> M. Roy (2003), op.cit..

<sup>10</sup> However, the US always lodges a broad exception for the market access obligation whose purpose is to ensure that the PTAs do not go beyond its GATS Article XVI obligations.

<sup>11</sup> It should be noted that some agreements use different liberalization modalities for financial services than for the rest of sectors. For further information, see the section on financial services in Part II.

**Table 1: Preferential Trade Agreements Reviewed**

| PTA                         | Entry into Force | Date of Signature         | WTO Notification | Negative or Positive List? <sup>12</sup>                               | GATS-type Market Access Obligation for M3? <sup>11</sup> | Date of Latest Offer in GATS Negotiations                                                                |
|-----------------------------|------------------|---------------------------|------------------|------------------------------------------------------------------------|----------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| New Zealand – Singapore     | Jan. 2001        | Nov. 2000                 | Sept. 2001       | Positive List                                                          | Yes                                                      | NZ: June 2005 (r)<br>SING: May 2005 (r)                                                                  |
| EFTA – Mexico <sup>13</sup> | Jul. 2001        | Nov. 2000                 | Aug. 2001        | Positive List                                                          | Yes                                                      | SWI: June 2005 (r)<br>ICE: May 2005 (r)<br>NOR: June 2005 (r)<br>LIE: May 2005 (r)<br>MEX: June 2005 (r) |
| EC – Mexico <sup>12</sup>   | Mar. 2001        | Oct. 2000 <sup>13</sup>   | June 2002        | Positive List                                                          | Yes                                                      | EC: June 2005 (r)<br>MEX: June 2005 (r)                                                                  |
| Chile – Costa Rica          | Feb. 2002        | Oct. 1999 <sup>13</sup>   | May 2002         | Negative List                                                          | No (neither for mode 1)                                  | CHL: June 2005 (r)<br>CR: April 2004 (i)                                                                 |
| Japan – Singapore           | Nov. 2002        | Jan. 2002                 | Nov. 2002        | Positive List, except that Japan uses negative list for NT for mode 3. | Yes                                                      | JAP: June 2005 (r)<br>SING: May 2005 (r)                                                                 |
| Singapore – Australia       | Jul. 2003        | Feb. 2003                 | Oct. 2003        | Negative List                                                          | Yes                                                      | SING: May 2005 (r)<br>AUS: May 2005 (r)                                                                  |
| US – Chile                  | Jan. 2004        | June 2003                 | Dec. 2003        | Negative List                                                          | Yes                                                      | US: May 2005 (r)<br>CHL: June 2005 (r)                                                                   |
| US – Singapore              | Jan. 2004        | May 2003                  | Dec. 2003        | Negative List                                                          | Yes                                                      | US: May 2005 (r)<br>SING: May 2005 (r)                                                                   |
| Chile – El Salvador         | June 2002        | Oct. 1999 <sup>14</sup>   | Mar. 2004        | Negative List                                                          | No (neither for mode 1)                                  | CHL: June 2005 (r)<br>SAL: Nov. 2004 (i)                                                                 |
| Republic of Korea – Chile   | April 2004       | Feb. 2003                 | April 2004       | Negative List                                                          | No (neither for mode 1)                                  | KOR: May 2005 (r)<br>CHL: June 2005 (r)                                                                  |
| EC-Chile                    | Mar. 2005        | Nov. 2002                 | Nov. 2005        | Positive List                                                          | Yes                                                      | EC: June 2005 (r)<br>CHL: June 2005 (r)                                                                  |
| EFTA – Singapore            | Jan. 2003        | June 2002                 | Jan. 2003        | Positive List                                                          | Yes                                                      | SWI: June 2005 (r)<br>ICE: May 2005 (r)<br>NOR: June 2005 (r)<br>LIE: May 2005 (r)<br>SING: May 2005 (r) |
| China – HKC                 | Jan. 2004        | Sep. 2003, with supps. in | Jan. 2004        | Positive List (for China)                                              | Yes                                                      | CHN: July 2005 (r)                                                                                       |

<sup>12</sup> This describes the general approach taken in the agreements, although some agreements take a different approach for financial services than for other sectors (see Part II.A of the paper).

<sup>13</sup> These agreements only contain commitments on financial services at this time.

<sup>14</sup> This represents the date of signature of the agreement (including services obligations), but the services commitments were negotiated afterwards.

(r) = revised offer; (i) = initial offer.

| <b>PTA</b>                  | <b>Entry into Force</b> | <b>Date of Signature</b>                          | <b>WTO Notification</b> | <b>Negative or Positive List?<sup>12</sup></b> | <b>GATS-type Market Access Obligation for M3?<sup>11</sup></b> | <b>Date of Latest Offer in GATS Negotiations</b>                                                                                            |
|-----------------------------|-------------------------|---------------------------------------------------|-------------------------|------------------------------------------------|----------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
|                             |                         | Aug. 2004 and Oct. 2005                           |                         |                                                |                                                                |                                                                                                                                             |
| <b>China – Macao China</b>  | Jan. 2004               | Oct. 2003, with supps. in Oct. 2004 and Oct. 2005 | Jan. 2004               | Positive List (for China)                      | Yes                                                            | <b>CHN:</b> July 2005 (r)                                                                                                                   |
| <b>EFTA – Chile</b>         | Dec. 2004               | June 2003                                         | Dec. 2004               | Positive List                                  | Yes                                                            | <b>SWI:</b> June 2005 (r)<br><b>ICE:</b> May 2005 (r)<br><b>NOR:</b> June 2005 (r)<br><b>LIE:</b> May 2005 (r)<br><b>CHL:</b> June 2005 (r) |
| <b>US – Australia</b>       | Jan. 2005               | Aug. 2004                                         | Dec. 2004               | Negative List                                  | Yes                                                            | <b>US:</b> May 2005 (r)<br><b>AUS:</b> May 2005 (r)                                                                                         |
| <b>Thailand – Australia</b> | Jan. 2005               | Jul. 2004                                         | Jan. 2005               | Positive List                                  | Yes                                                            | <b>THA:</b> October 2005 (r)<br><b>AUS:</b> May 2005 (r)                                                                                    |
| <b>Panama – El Salvador</b> | April 2003              | March 2002                                        | April 2005              | Negative List                                  | No (neither for mode 1)                                        | <b>PAN:</b> April 2003 (i)<br><b>SAL:</b> Nov. 2004 (i)                                                                                     |
| <b>Japan – Mexico</b>       | April 2005              | Sep. 2004                                         | April 2005              | Negative List                                  | No (neither for mode 1)                                        | <b>JAP:</b> June 2005 (r)<br><b>MEX:</b> June 2005 (r)                                                                                      |
| <b>US – Bahrain</b>         | Aug. 2006               | Sep. 2004                                         | -----                   | Negative List                                  | Yes                                                            | <b>US:</b> May 2005 (r)<br><b>BAH:</b> May 2005 (r)                                                                                         |
| <b>US – Oman</b>            | -----                   | Jan. 2006                                         | -----                   | Negative List                                  | Yes                                                            | <b>US:</b> May 2005 (r)<br><b>OMN:</b> Jan. 2006 (i)                                                                                        |
| <b>US – CA + DR</b>         | Mar. 2006               | Aug. 2005                                         | Mar. 2006               | Negative List                                  | Yes                                                            | <b>US:</b> May 2005 (r)<br><b>GUA:</b> Aug. 2003 (i)<br><b>DR:</b> Oct. 2004 (i)<br><b>NIC:</b> June 2005 (i)<br><b>HND:</b> Sept. 2005 (r) |
| <b>US – Morocco</b>         | Jan. 2006               | June 2004                                         | Jan. 2006               | Negative List                                  | Yes                                                            | <b>US:</b> May 2005 (r)<br><b>MOR:</b> June 2005 (i)                                                                                        |
| <b>US – Peru</b>            | -----                   | April 2006                                        | -----                   | Negative List                                  | Yes                                                            | <b>US:</b> May 2005 (r)<br><b>PER:</b> June 2005 (r)                                                                                        |
| <b>Japan – Malaysia</b>     | -----                   | Dec. 2005                                         | -----                   | Positive List                                  | Yes                                                            | <b>JAP:</b> June 2005 (r)<br><b>MAL:</b> Dec. 2005 (r)                                                                                      |
| <b>Korea – Singapore</b>    | Mar. 2006               | Aug. 2005                                         | Feb. 2006               | Negative List                                  | No                                                             | <b>KOR:</b> May 2005 (r)<br><b>SING:</b> May 2005 (r)                                                                                       |
| <b>US – Colombia</b>        | -----                   | Feb. 2006 (conclusion of negotiations)            | -----                   | Negative List                                  | Yes                                                            | <b>US:</b> May 2005 (r)<br><b>COL:</b> June 2005 (r)                                                                                        |
| <b>Singapore – India</b>    | -----                   | June 2005                                         | -----                   | Positive List                                  | Yes                                                            | <b>SING:</b> May 2005 (r)<br><b>IND:</b> Aug. 2005 (r)                                                                                      |

Overall, PTAs appear to offer limited value added over GATS disciplines on the rules areas, e.g., safeguard mechanism, disciplines on subsidies or domestic regulation.<sup>15</sup> Exceptions include the additional rules found in the additional chapters containing disciplines on telecom and financial services, additional transparency provisions, as well some sector-specific provisions relating to recognition in certain agreements, an issue that might merit further study. Most PTAs reviewed also include comprehensive sets of disciplines on government procurement, but these are not specific to services and are self-contained in their own chapter.<sup>16</sup> Accordingly, the most significant variance between PTAs and the GATS, as well as among PTAs, may well rest on the liberalization commitments that are undertaken, which may of course be influenced by the structure or modalities of market opening provisions, as discussed above. Oddly, this is, however, the aspect that has been less extensively explored so far.

## **B. Overview of the value-added of PTAs over existing GATS schedules and offers.**

### *(i) The project and the methodology*

In attempting to provide a comprehensive overview of the liberalization commitments of the recent wave of PTAs, this paper has reviewed schedules and lists of reservations on services contained in 28 preferential trade agreements. It reviews all those PTAs with services commitments that have entered into force and been notified to the WTO under GATS Article V since the start of the services negotiations in 2000.<sup>17</sup> In addition, so as to provide more information on the ongoing flurry of services PTAs, the paper has also added

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<sup>15</sup> See S/WPGR/W/46 for information on rules on subsidies in RTAs. See S/WPGR/W/4 and addendum 1 for similar information in relation to emergency safeguard measures.

<sup>16</sup> For information on disciplines in RTAs on government procurement in services, see: S/WPGR/W/49, S/WPGR/51.

<sup>17</sup> As of 1 May 2006. Some of these recent agreements have not been reviewed here because they do not include services liberalization commitments, but provide for future negotiations, e.g., US-Jordan, New Zealand-Thailand, CARICOM (which as of 1 May had not completed its proposed liberalization programme regarding trade in services). China's commitments in its PTAs with Macao and Hong Kong have been reviewed, although not those of the latter two WTO Members since the agreements binds them not to introduce any new discriminatory measures in various sectors, but does not include a schedule of commitments or lists of reservations as such. Commitments in the EFTA-Mexico and EC-Mexico PTAs are limited at this time to financial services. We have not reviewed the EU enlargements or Europe Agreements since these are integration arrangements more than typical trade agreements.

some of the recent PTAs that, even if not notified, have been signed and/or ratified.<sup>18</sup> The agreements reviewed, along with some relevant information such as date of notification, are listed in Table 1. As highlighted in Table 2, the paper therefore reviews the PTA commitments undertaken by 29 WTO Members (counting the EC15 as one).

Given the relative complexity of services agreements (different modes of supply, types of barriers, and liberalization modalities), it is not an easy task to provide an overview of the state of commitments and to capture the overall extent of improvements. To assess PTA commitments, we have focused, in the first instance, on sector coverage. This captures the breadth of commitments across all services sectors, highlighting for example how many sectors have been left without any binding whatsoever. However, while improvements in the sectoral breadth of commitments represents one important way in which PTAs can go beyond GATS, another key aspect relates to the depth of commitments, i.e., the actual level of access bound for the sectors committed. In order to provide an overview of the depth of PTA commitments, we have, as a second step, identified each sector where improvements to the depth of commitments were provided, but without trying to rank or quantify the quality of each particular improvement. This allows to provide an aggregate picture of the extent to which, out of the universe of services sectors, countries have undertaken new commitments (expansion of sectoral coverage) and improved the level of bindings for already committed sectors (depth of commitments). Additional details on the depth of commitments is best provided through a country-by-country or sector-by-sector qualitative analysis, which is the focus of Part II.

Given the size of the task involved - matching more than a thousand pages of GATS schedules and offers and a similar amount of not readily comparable pages of PTA commitments -, the paper solely looks at modes 1 (cross-border trade) and 3 (commercial presence). Mode 2 commitments are typically liberal and comparing PTA commitments under this mode might provide little additional insights. While mode 4 liberalization commitments represent high stakes for many countries, they are typically crafted along somewhat different parameters than modes 1 and 3 and are also subject to specific disciplines. This aspect was therefore left for another day as it may merit a paper of its

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<sup>18</sup> While the paper aimed to be as comprehensive as possible, other PTAs keep springing up: for example, Singapore has signed agreements with Jordan and Panama, respectively.

own.<sup>19</sup> Nevertheless, modes 1 and 3 are estimated to amount to more than 80% of world services trade.<sup>20</sup>

In capturing the value-added of the recent wave of services PTAs, we felt it important to compare their liberalization commitments not only to WTO Members' existing GATS commitments, which, for the most part, were negotiated more than 10 years ago, but also to services offers submitted in the Doha negotiations so far.<sup>21</sup> Do PTA commitments go beyond not only GATS existing commitments, as they would naturally be expected to do, but also beyond GATS offers, and to what extent?

So as to provide the most accurate and relevant picture overall, the approach chosen was to look at each of the more than 150 sub-sectors comprising the universe of services activities to see whether, for each particular sub-sector and mode, the PTA commitments improved upon the GATS offer, either by binding a new service sub-sector (i.e., the sector was not included in the GATS schedule nor the offer or was "unbound" for the relevant modes of supply) or by improving upon the GATS binding for that sub-sector (e.g., removing a limitation and therefore providing for binding at a higher level of liberalization). The research undertaken thus permits to indicate, for each Member, the proportion of total services sub-sectors improved (through either new bindings or better ones) in comparison with the GATS offer. The same exercise is done to assess the value-added of GATS offers over GATS commitments currently in force, so as to have a point of comparison in assessing the extent to which PTAs make advances. Of course, although such type of indicators provide useful information and allows for an overall snapshot for analytical purposes, they should not be used to assess, in isolation, the value of any individual country's PTA or GATS commitments. While the methodology proposed aims at providing the most accurate and comprehensive global picture, the overall quality or value-added of commitments for the two

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<sup>19</sup> On the treatment of mode 4 in RTAs, see: OECD (2002), *Labour Mobility in Regional Trade Agreements*, Paris.

<sup>20</sup> WTO (2005), International Trade Statistics 2005, Geneva.

<sup>21</sup> For an overview of GATS offers, see: Rolf Adlung and Martin Roy (2005), "Turning Hills into Mountains? Current Commitments under the GATS and Prospects for Change", Journal of World Trade, Vol. 39, No. 6, pp. 1161-1194.

modes of supply reviewed also depends on the precise content of each particular commitment. These aspects, which cannot easily be summarized across agreements, are explored in the following Part. More details about the methodology are found in Box 1.

**Table 2: Cross-Tabulation of Countries and PTAs**

| WTO Members whose Commitments Are Reviewed               | Other Parties to PTAs Reviewed |         |       |          |            |                |      |             |                      |           |          |                  |       |       |                |              |          |        |         |             |           |      |        |      |           |          |
|----------------------------------------------------------|--------------------------------|---------|-------|----------|------------|----------------|------|-------------|----------------------|-----------|----------|------------------|-------|-------|----------------|--------------|----------|--------|---------|-------------|-----------|------|--------|------|-----------|----------|
|                                                          | Australia                      | Bahrain | Chile | Colombia | Costa Rica | Dominican Rep. | EFTA | El Salvador | European Communities | Guatemala | Honduras | Hong Kong, China | India | Japan | Korea, Rep. of | Macao, China | Malaysia | Mexico | Morocco | New Zealand | Nicaragua | Oman | Panama | Peru | Singapore | Thailand |
| Australia                                                |                                |         |       |          |            |                |      |             |                      |           |          |                  |       |       |                |              |          |        |         |             |           |      |        |      |           |          |
| Bahrain                                                  |                                |         |       |          |            |                |      |             |                      |           |          |                  |       |       |                |              |          |        |         |             |           |      |        |      |           |          |
| Chile                                                    |                                |         |       |          | x          |                |      |             |                      |           |          |                  |       |       |                |              |          |        |         |             |           |      |        |      |           |          |
| China                                                    |                                |         |       |          |            |                |      |             |                      |           |          |                  |       |       |                |              |          |        |         |             |           |      |        |      |           |          |
| Colombia                                                 |                                |         |       |          |            |                |      |             |                      |           |          |                  |       |       |                |              |          |        |         |             |           |      |        |      |           |          |
| Costa Rica                                               |                                |         |       |          |            |                |      |             |                      |           |          |                  |       |       |                |              |          |        |         |             |           |      |        |      |           |          |
| Dominican Rep.                                           |                                |         |       |          |            |                |      |             |                      |           |          |                  |       |       |                |              |          |        |         |             |           |      |        |      | x         |          |
| EFTA (Iceland,<br>Liechtenstein, Norway,<br>Switzerland) |                                |         | x     | x        |            |                |      |             |                      |           |          |                  |       |       |                |              |          |        |         |             |           |      |        |      |           |          |
| El Salvador                                              |                                |         | x     | x        |            |                |      |             |                      |           |          |                  |       |       |                |              |          |        |         |             |           |      |        | x    |           |          |
| European Communities                                     |                                |         | x     |          |            |                |      |             |                      |           |          |                  |       |       |                |              |          |        |         |             |           |      |        | x    |           |          |
| Guatemala                                                |                                |         |       |          |            |                |      |             |                      |           |          |                  |       |       |                |              |          |        |         |             |           |      |        |      | x         |          |
| India                                                    |                                |         |       |          |            |                |      |             |                      |           |          |                  |       |       |                |              |          |        |         |             |           |      |        |      | x         |          |
| Japan                                                    |                                |         |       |          |            |                |      |             |                      |           |          |                  |       |       |                |              | x        | x      |         |             |           |      |        | x    |           |          |
| Honduras                                                 |                                |         |       |          |            |                |      |             |                      |           |          |                  |       |       |                |              |          |        |         |             |           |      |        |      | x         |          |
| Korea, Rep. of                                           |                                |         | x     |          |            |                |      |             |                      |           |          |                  |       |       |                |              |          |        |         |             |           |      |        |      | x         |          |
| Malaysia                                                 |                                |         |       |          |            |                |      |             |                      |           |          |                  |       |       |                | x            |          |        |         |             |           |      |        |      | x         |          |
| Mexico                                                   |                                |         |       |          |            |                | x    |             | x                    |           |          |                  |       |       | x              |              |          |        |         |             |           |      |        |      |           |          |
| Morocco                                                  |                                |         |       |          |            |                |      |             |                      |           |          |                  |       |       |                |              |          |        |         |             |           |      |        |      |           |          |
| New Zealand                                              |                                |         |       |          |            |                |      |             |                      |           |          |                  |       |       |                |              |          |        |         |             |           |      |        |      | x         | x        |
| Nicaragua                                                |                                |         |       |          |            |                |      |             |                      |           |          |                  |       |       |                |              |          |        |         |             |           |      |        |      | x         | x        |
| Oman                                                     |                                |         |       |          |            |                |      |             |                      |           |          |                  |       |       |                |              |          |        |         |             |           |      |        |      | x         | x        |
| Panama                                                   |                                |         |       |          |            | x              |      |             |                      |           |          |                  |       |       |                |              |          |        |         |             |           |      |        |      |           |          |
| Peru                                                     |                                |         |       |          |            |                |      |             |                      |           |          |                  |       |       |                |              |          |        |         |             |           |      |        |      | x         | x        |
| Singapore                                                | x                              |         |       |          |            |                | x    |             |                      |           |          |                  |       |       | x              | x            | x        |        |         |             |           |      |        |      | x         |          |
| Thailand                                                 | x                              |         |       |          |            |                | x    |             |                      |           |          |                  |       |       |                |              | x        | x      |         |             |           |      |        |      | x         |          |
| United States                                            | x                              | x       | x     | x        | x          | x              | x    | x           | x                    | x         | x        | x                | x     | x     | x              | x            | x        | x      | x       | x           | x         | x    | x      | x    |           |          |

### **BOX 1: Details about the Methodology**

- In producing estimates for each country, we have compared the commitments undertaken in all services sub-sectors, in the light of the Services Sectoral Classification List (MTN.GNS/W/120), as well as the GATS Annex on Financial Services, the maritime model schedule for maritime auxiliary services, and the GATS Annex on Air Transport Services.
- The universe of services sectors has been split up so as to permit the most precise assessment: 152 sub-sectors for mode 3 and 142 for mode 1. Some sub-sectors were excluded from our comparison of commitments under mode 1 because they appear of quite limited relevance or simply not technically feasible, e.g., building cleaning, storage warehousing. This aimed to ensure that results did not overestimate the improvements made in negative-list agreements, where all sectors are liberalized unless provided otherwise. Overall, reviewing each country's existing GATS commitments, GATS offer, and PTA commitments for each sub-sector for these two modes of supply amounts to more than 30,000 observations.
- When presenting country-specific data summarizing advances made through PTAs, we have compared, for each particular sector, the commitments included in the latest GATS offer with the best commitments undertaken in any of the PTAs to which the country was party. In compiling data on the proportion of new/improved commitments in PTAs, we did not factor in situations where PTA commitments fall short of GATS schedules/offers.
- The paper only reviews improvements over GATS schedules/offers in relation to liberalization obligations (i.e., market access and national treatment) and not improvements with regard to additional commitments (Article XVIII of the GATS).<sup>22</sup> MFN provisions and exceptions were similarly not reviewed.
- Improvements to horizontal commitments (limitations applying to all scheduled sectors) were also assessed, but not systematically factored into the overview so as not to overestimate the number of sectors whose levels of bindings were improved. The majority of PTA commitments reviewed did not provide for improvements to horizontal commitments. Those that did only provided 'horizontal' improvements in relation to mode 3.
- This overview only assesses whether new bindings have been included in PTAs or existing ones improved. A new commitment/binding occurs when a bound level of access is given for a sub-sector that had not previously been subject to the liberalization obligations (e.g., it was not included in the schedule/offer) or for a particular mode of supply that had been left "unbound". An improved commitment is when the level of binding/commitment for a particular sub-sector and mode is made more liberal: either one goes from a partial commitment (i.e., a commitment with some market access limitation) to a full commitment (i.e., a commitment without any market access limitation) or from a partial commitment to a better partial commitment (i.e., with lesser limitations). The overview does not attempt to rank or quantify the value of the specific commitments undertaken.
- Assessing the extent to which PTAs provide for new and improved bindings necessarily involves a degree of value judgement, especially when comparing commitments framed under a positive-list approach and others under a negative-list one. Therefore, the overview does not in any way amount to a legal evaluation of commitments.

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<sup>22</sup> Article XVIII provides that countries can use the last column of their schedules to undertake commitments on measures not falling within the scope of the liberalization obligations, e.g., additional regulatory disciplines for telecommunications.

(ii) *Presentation of the results.*

Chart 1 presents the results for each country reviewed for mode 3 while Chart 2 (found in the Annex) does the same for mode 1. By looking at the proportion of new and improved commitments for each country, the charts illustrate the value-added of each country's PTA commitments over their latest GATS offer.

So as to give a point of comparison, the charts illustrate (through the bars labelled "GATS"), the value-added of each country's latest GATS offer over their existing GATS schedules. The bottom part of the bars shows the proportion of sub-sectors in the GATS schedule that is not improved upon by the offer. The lighter part above represents the proportion of sub-sectors already bound in the GATS schedule that have been improved upon by the GATS offer. The striped part further above shows the proportion of sub-sectors where new commitments are proposed in the GATS offer. The upper part of the bars represent the proportion of sub-sectors that remain uncommitted in both GATS schedules and GATS offers.

Along similar lines, the bars labelled "PTA" provide an overview of how much PTA commitments add to GATS offers. The bottom part of the bars shows the sub-sectors committed in GATS schedules/offers that have not been improved through PTAs. The lighter part above represents the sub-sectors in the GATS schedule/offer that are further improved upon by the PTA (i.e., the PTA provides a more liberal binding than in the GATS offer by, for example, not including an economic needs test or a foreign equity limitation). The striped part further above shows the sub-sectors where the PTA provides for new bindings for the relevant mode, i.e., a level of liberalization is bound where there were no commitments whatsoever in the GATS schedules/offers. The upper part of the bars represent the proportion of sub-sectors that remain uncommitted in both GATS schedules/offers and PTAs. In other words, the "value-added" of the PTAs over the GATS offers is captured in the lighter and striped parts of the bars. The bars labelled "GATS" represent the "value-added" of the GATS offer over the current GATS commitments in the same manner.

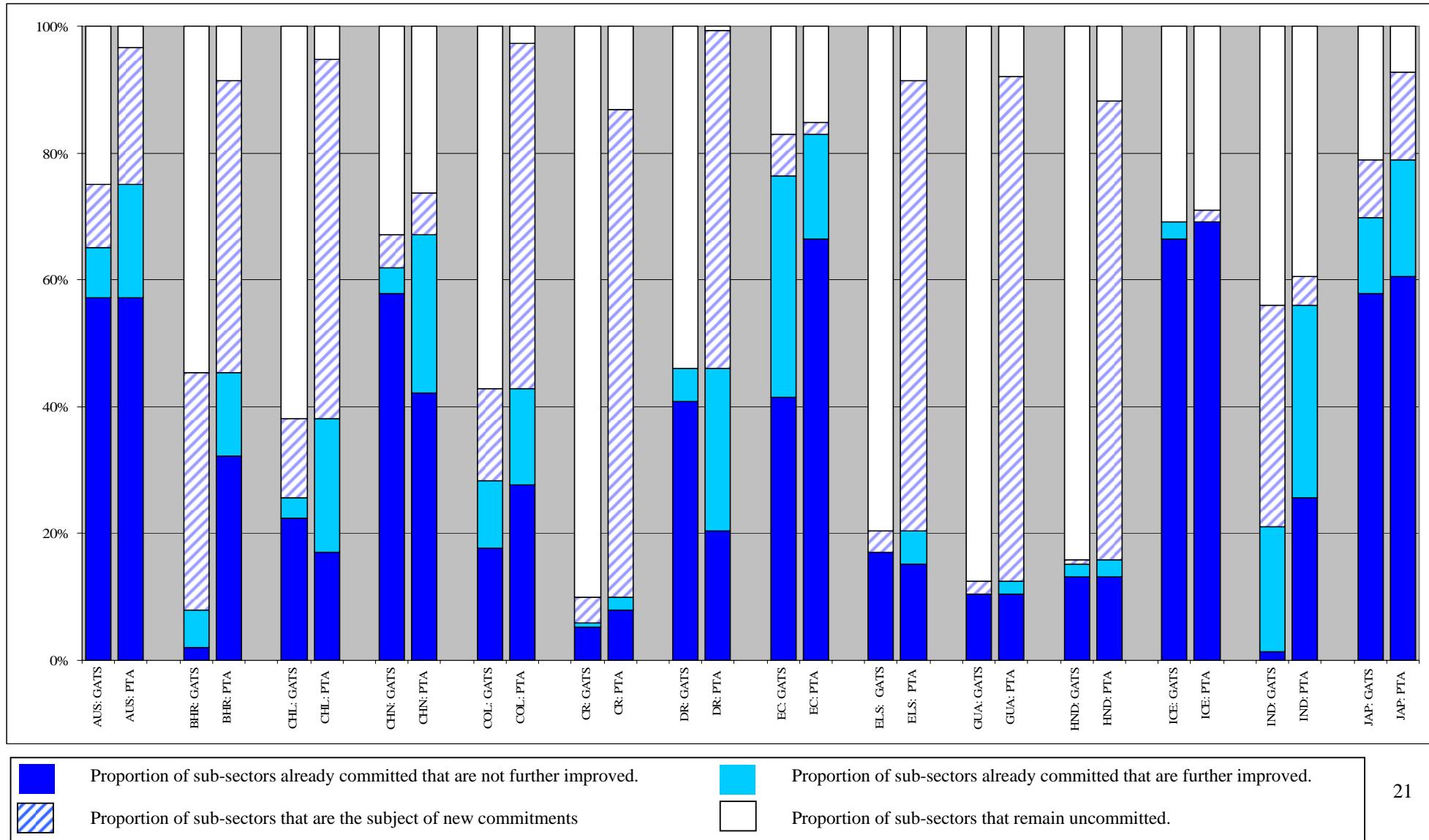
The results show that, overall, PTA commitments tend to go significantly beyond GATS offers in terms of improved and new bindings. The proportion of new/improved

commitments is generally much greater in PTAs (compared to GATS offers) than in GATS offers (when compared to existing GATS commitments). There is, however, much diversity among the countries reviewed. Some countries exhibit spectacular improvements in their PTA commitments. Among them are countries that have signed a PTA with the United States, i.e., Bahrain, Central American countries, Chile, Colombia, Dominican Republic, Morocco, Oman, Peru, and Singapore. Most of these generally had mode 1/mode 3 bindings in their GATS schedules/offers in less than half of all services sub-sectors and have experienced giant leaps in terms of sector coverage: on average, they have PTA commitments for both modes of supply in more than 80% of all services sub-sectors.

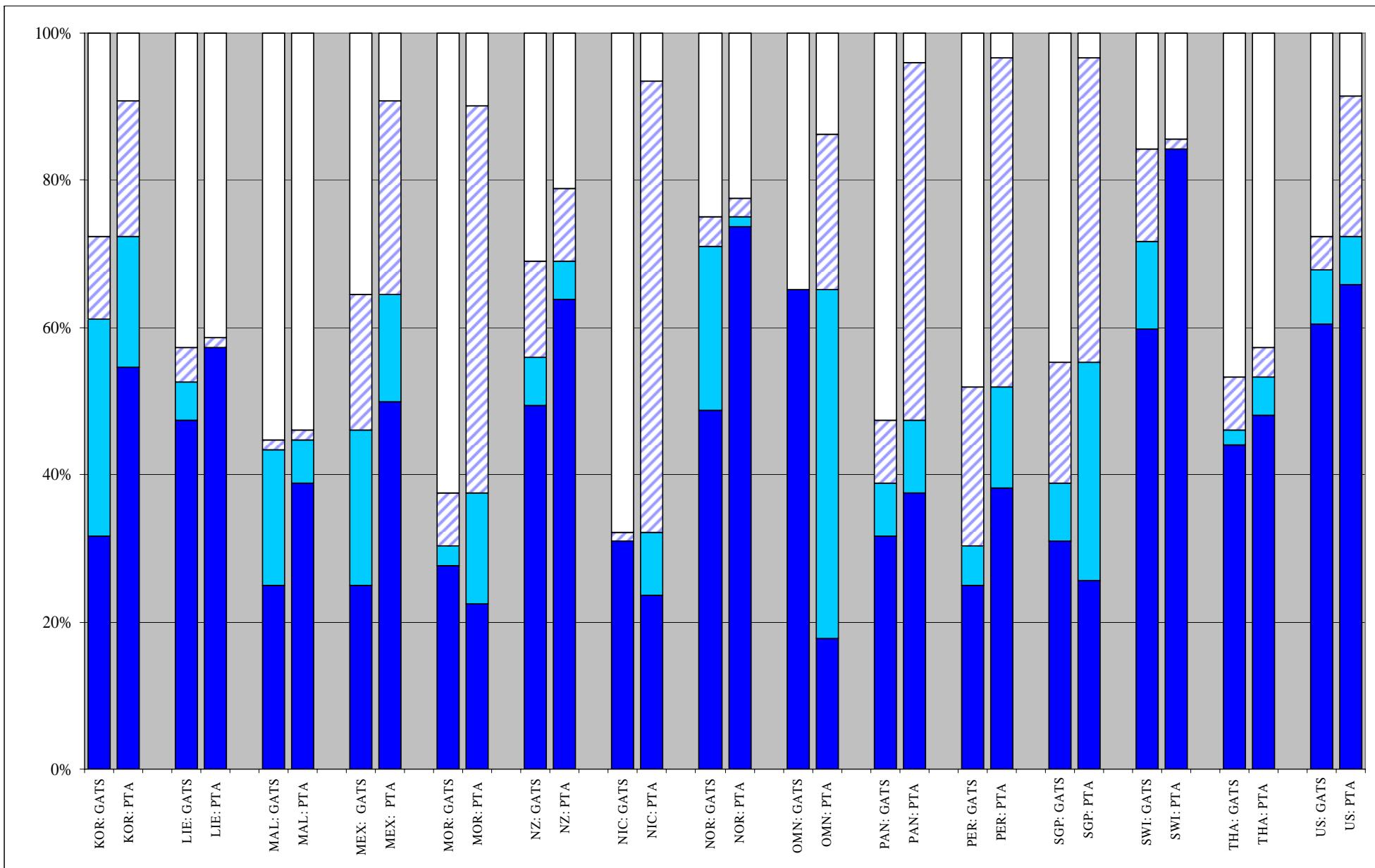
Those with a higher number sectors already bound in their GATS schedules/offers have improved the level of binding for a good proportion of them. For example:

- Morocco has undertaken new bindings under mode 1 in 94 sub-sectors (66% of the total) and under mode 3 in 80 sub-sectors (53%). In addition, it improved a number of sector-specific commitments contained in its GATS offer: 23 under mode 3 (15%) and 12 under mode 1 (8%);
- Singapore, under mode 3, went beyond its GATS offer by improving the level of commitment in 45 sub-sectors (30%) and making new commitments in 63 sub-sectors (41%).
- The Dominican Republic, which had mode 1 commitments in its GATS schedule/offer in 26% of sub-sectors has increased this proportion to 89% in its PTA.
- Even if starting from a higher level of commitments in its GATS schedule/offer, Australia, regarding mode 3, improved the level of commitment in 27 sub-sectors included in its GATS schedule/offer (18%) and undertook new commitments in 33 sub-sectors (22%).

**CHART 1 (1/2): Proportion of Sub-Sectors with New and Improved Commitments under Mode 3, per WTO Member**  
 (when comparing the GATS offer to the GATS schedule ("GATS") and the PTA commitments to the GATS offer ("PTA"))



**CHART 1 (2/2)**



Examples of the types of new/improved PTAs commitments for some of these countries include:

- Australia: bindings going beyond GATS span a wide array of sectors, for example: the scope of the investment review provisions are reduced and spelled out; improved commitments on legal services, on retailing (no limitation with regard to the dispensing of pharmaceuticals), on tourism (through the removal of a commercial presence requirement for travel agencies/tour operators services), and on financial services (in particular through permitting branching for life insurance); new commitments on courier services and audiovisual services; and improved and new commitments in relation to rail transport services. Various of these improvements over GATS were contracted in Australia's PTA with the US, but not others. Australia's PTA with Singapore also includes a number of commitments that go beyond the GATS offer, but the one with Thailand tends to simply reflect existing GATS commitments and not to include the improvements that Australia has proposed in its GATS offer.
- Singapore: one of the leaders in propagating services PTAs, Singapore has followed a positive-list approach with India, EFTA, New Zealand and Japan, and a negative-list approach in its PTAs with the US, Korea and Australia. The commitments it has taken in the latter three agreements tend to go further than the others, especially the PTA with the US and, to a lesser extent, that with Australia. There is, overall, much diversity in the commitments undertaken by Singapore in its various PTAs. Examples of PTA commitments going beyond the GATS schedule/offer include: new commitments, although with various limitations, on legal services (only for the US and Australia), including with additional explicit phase-in liberalization in the PTA with the US; new and improved commitments for various sub-sectors under "Business Services"; new commitments on courier services (except in the PTAs with India and Korea) and on maritime freight transport, as well as some other services relating to maritime transport; improvements to commitments on basis telecom (no ownership restriction for facilities-based services) in most PTAs; new commitments on retailing services in all PTAs, although limits attached vary; new commitments on a number of air transport services, depending on the PTA; and a number of improved commitments in financial services

(e.g., removal of foreign equity limits on insurance), including explicit phase-in liberalization in PTA with the US.<sup>23</sup>

- Chile: Another champion of PTAs, Chile has followed a positive list approach with the EC and EFTA, and a negative list approach with Costa Rica, El Salvador, Korea, and the US. In general, Chile's commitments in PTAs improve on the country's GATS commitments in sectors such as professional services, courier services, telecommunications, construction services, financial services, maritime services, and services auxiliary to all modes of transport. Chile's PTA commitments go even further than the offer submitted to the WTO in some professions and business services (particularly with regard to mode 1). The commitments undertaken by Chile in its PTA with the US go further than the others in key sectors such as professional services; telecommunications, by allowing access to its local market; and financial services, by allowing more services to be supplied on a cross-border basis, and by allowing US insurance companies to establish as branches.

Even if not engaged in a PTA with the US, other countries, such as Mexico<sup>24</sup>, Panama, Japan, and Korea, exhibit a significant proportion of improved/new commitments in PTAs in both modes of supply, although the extent of the improvements vary and are not as consistently spectacular. Nevertheless, for example, Mexico increased the proportion of sectors covered by mode 3 commitments from 65% in the GATS offer to 91% in PTA commitments; while Panama had less than half of sectors (42%) covered by mode 1 commitments in its GATS offer, it had committed almost all (91%) in PTAs. Of course, even if NAFTA was not reviewed in this paper, Mexico's commitments in the subsequent PTAs reviewed here might reflect in good part what had been done with the US and Canada in the 1990s. China and India also provide improvements in a notable number of sectors, although these tend to take the form of improvements to sectors already committed under GATS schedules/offers rather than new bindings, and are mostly limited to mode 3.

In contrast, Charts 1 and 2 also show that some other countries seem to have provided for more limited proportion of new/improved bindings on modes 1 and 3 compared to GATS

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<sup>23</sup> On Singapore's PTA strategy, see: S.M. Thangavelu and Mun-Heng Toh (2005), "Bilateral 'WTO-Plus' Free Trade Agreements: The WTO Trade Policy Review of Singapore 2004", *World Economy*, Vol. 28: 9.

<sup>24</sup> Mexico's commitments in NAFTA entered into force well before the period reviewed here.

offers, such as Malaysia, Thailand, or EFTA countries. Malaysia, for example, had, pursuant to its GATS schedule/offer, no mode 1 commitments in 61% of all services sub-sectors. That proportion decreased by less than 2% in its PTA commitments. Of course, it needs to be recalled that these are only one indicator of the value-added of PTA commitments that serves to highlight general trends in these two modes of supply, but not to define or rank the specific quality and value of a given country's commitments. The value of services PTAs as a whole may also hinge on the types of mode 4 commitments, as well as, obviously, the non-services aspects.

Examples of the types of new/improved PTAs commitments for these other countries include:

- Japan: Improvements in the PTAs mostly take the form of new bindings in a number of sub-sectors, principally within 'Transport Services' and 'Business Services'. Improvements to sub-sectors contained in the GATS offer include the expansion of product coverage in distribution services. The PTA with Singapore tends to have less commitments than Japan's agreements with Malaysia and Mexico; the latter contained improvements that were included in the GATS offer, while the PTA with Singapore more often tends to simply reflect commitments in the GATS schedule. This may be explained by the fact that the PTA with Singapore was concluded in 2002, while those with Mexico and Malaysia were signed in 2004 and 2005.
- European Communities: the PTA with Chile, which was signed in 2002, tends to include, in many cases, commitments at a lower level than what had been offered in the GATS negotiations afterwards. Areas where the PTA goes further pertain to certain improvements - often limited to certain Member States - in relation to research and development services, legal services, distribution, maritime transport, and telecommunications.
- India: Starting from a low level of bindings in its existing GATS schedule for these two modes (less than a quarter of sectors bound under mode 3 and less than 10% for mode 1), various new sectoral bindings were proposed in GATS offers. GATS+ commitments in the PTA with Singapore essentially take the form of improvements in

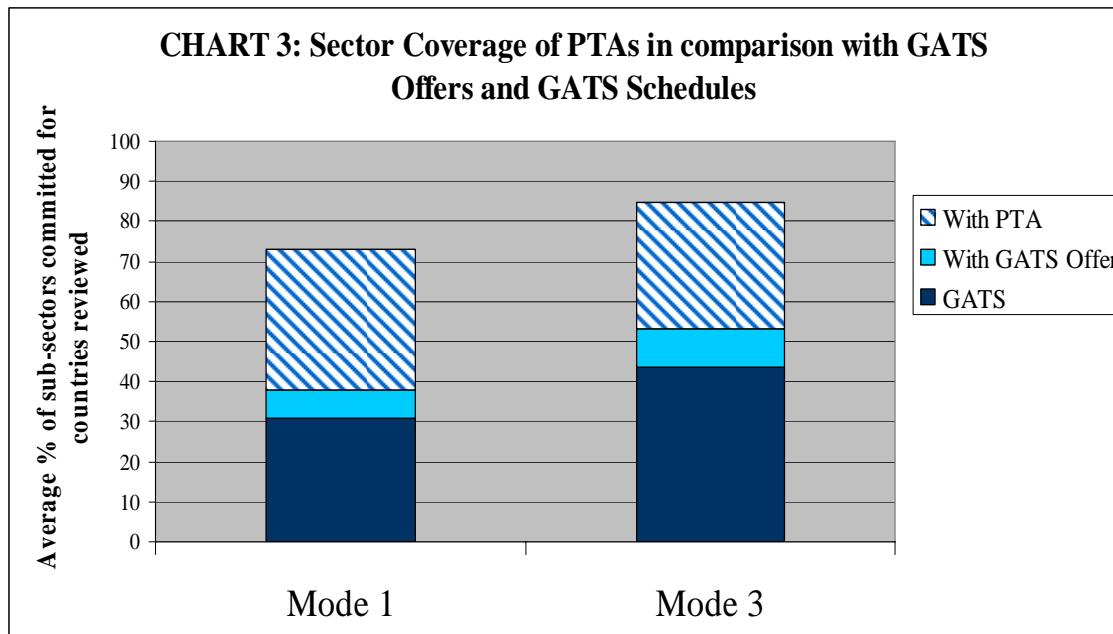
relation to mode 3 for sectors already committed in the GATS schedule/offer. Many of these improvements took the form of the removal of the requirement for foreign investors with prior collaboration in the sector to obtain approval from the Foreign Investment Promotion Board. This requirement which was included in virtually all the sub-sectors offered by India has, except for construction and distribution, been removed from the PTA. In addition, very specific improvements are also made in financial services, for example, three Singapore banks are allocated a separate quota of 15 branches over 4 years, over and above the quota for all foreign banks. On the other hand, it can be noted that some commitments in the PTA are worse than the offer. In telecommunications, for instance, the foreign equity limitation for voice mail, on-line information and database retrieval, and enhanced/value added services is 51%, even if a higher percentage had been offered in the Doha services negotiations.

- United States: While they do not provide for spectacular deviations, PTA commitments go beyond the GATS schedule/offer in a number of sectors. In financial services, new commitments are undertaken under mode 1 for insurance intermediation and with respect to certain portfolio management services. Other GATS+ commitments include new commitments on repair and maintenance of vessels, on certain port-related activities, as well certain improvements in relation to air, road, rail, and auxiliary transport services. PTAs also provide, among other things, for new commitments on R&D services. The US uses the same list of reservations (Annex 1 and Annex 2) in all its PTAs, except in relation to cable television and maritime-related services, where some PTA partners get better treatment than others. Like the GATS offer, PTAs have not made headway in some of the most difficult areas for the US, in particular key maritime transport services.

Overall, while much diversity was found, the overview suggests that many PTAs go well beyond GATS offers in terms of sector coverage (i.e., commitments in new sub-sectors), but also levels of commitments, as suggested by the proportion of sub-sectors where commitments in GATS schedules/offers were improved. Many PTAs have gone a long way to correct the generally low level of sector coverage in Members' existing GATS commitments and the modest quality of offers in the Doha Round. Chart 3 illustrates this

contrast by showing, for each mode, the average sector coverage for the group of countries reviewed (i.e., proportion of sub-sectors where a given level of liberalization is bound).

From Chart 3, as well as Charts 1 and 2, we see that the general trend of PTA commitments going significantly beyond GATS offers is relevant for both modes of supply. The only exceptions are India and China, which have tended to concentrate their PTA efforts on mode 3 more than cross-border supply.



From this overview, it also appears that negative-list agreements have yielded greater proportions of new/improved liberalization bindings, although this is due in good part to the fact that the US, which consistently uses this approach, has been involved in PTAs with countries that have exhibited strong results. Those countries – mentioned above – that have on average shown a lesser proportion of new/improved commitments in PTAs have all used a positive-list scheduling approach. This is not to say, however, that all positive-list agreements have led to lesser commitments than negative-list ones. China's commitments in its agreements with Hong Kong and Macao, based on a positive-list, provides for many improvements that appear to provide for concrete new commercial opportunities, in particular in professional services, audiovisual, construction, distribution, and in maritime, air, road and

auxiliary transport services.<sup>25</sup> One can nevertheless note that some countries that have concluded agreements of both types, such as Singapore and Australia, have undertaken greater commitments in the negative-list ones.

While the precise content of the new/improved commitments included in PTAs is looked at in more depth in the next Part, Chart 4 illustrates that the value-added of PTA commitments is fairly widespread across sector groupings. The bars labelled "PTA" in the chart show the proportion of the countries reviewed that have, under mode 3 for each sector grouping, either 1) undertaken certain commitments in the GATS offer for the sector grouping and did not improve upon them in the PTA (bottom part of the bars); 2) undertaken certain commitments in the GATS offer for the sector and improved upon them in the PTA (lighter part of the bar above); 3) undertaken, through PTAs, commitments for the first time in a given sector grouping (striped part of the bar further above); 4) took no commitment, in the PTA as in the GATS offer. The bars labelled "GATS" do the same by comparing commitments proposed in the GATS offers to those contained in GATS schedules.

Among other things, the Chart highlights that, in sectors such as audiovisual, postal-courier, distribution, maritime transport, and auxiliary transport, a good number of countries reviewed undertook commitments for the first time through PTAs. In others sectors, such as financial services and telecommunications, where most countries reviewed had at least some commitments in their GATS schedules/offers, the PTA advances naturally took the form of improvements to existing commitments (more than half of countries reviewed went further than their GATS offers in these sectors). In maritime transport services (including auxiliary maritime services), out of 29 Members reviewed, 9 Members that had no GATS commitments nor made offers in this sector undertook commitments in their PTAs, while more than half of those that already had offered or undertaken commitments in the GATS improved upon them.

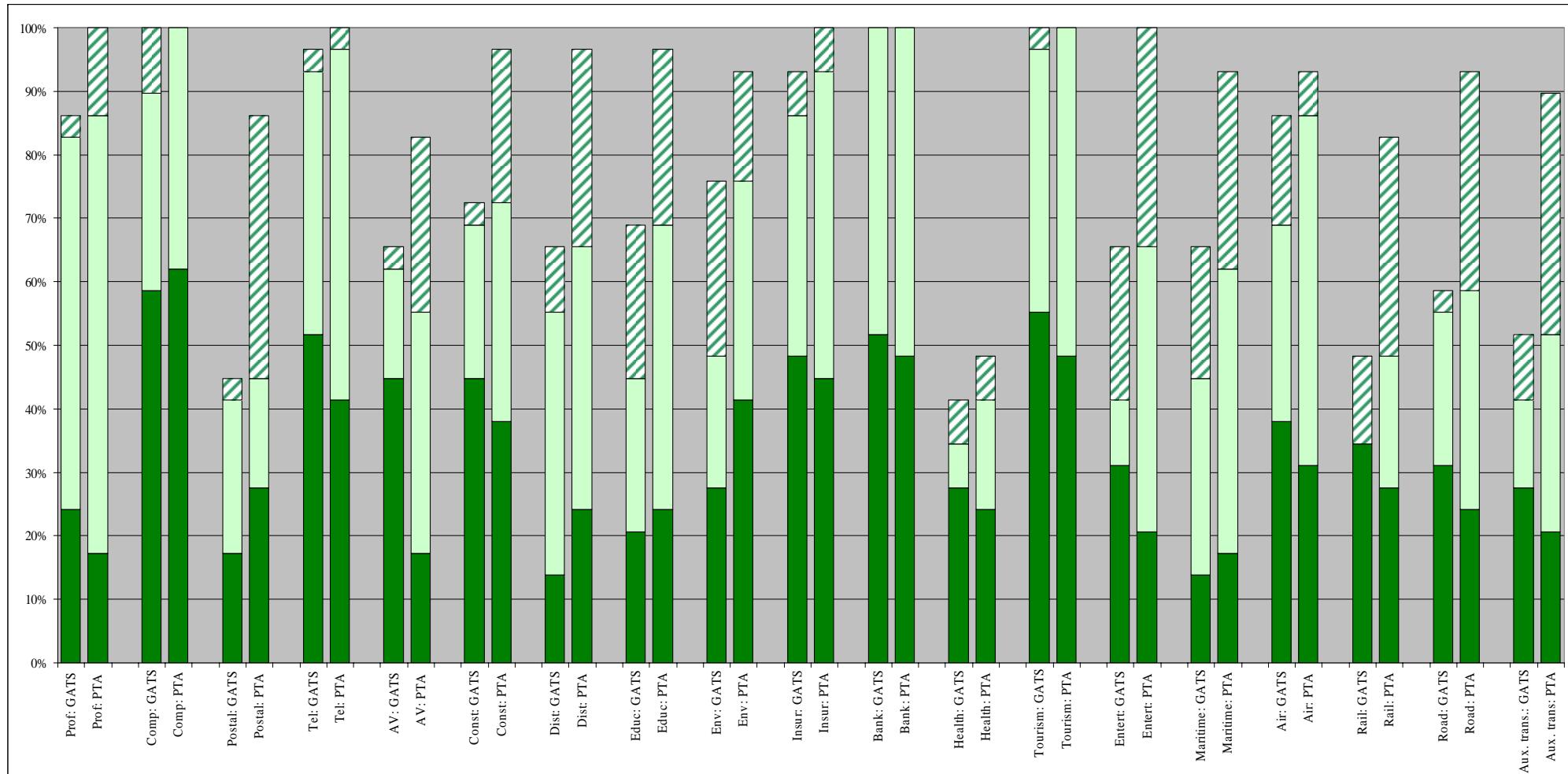
By presenting information on sector groupings where GATS offers improved upon GATS schedules, Chart 4 also highlights that PTAs provide for advances both for sectors that had tended to attract less offers in the GATS (e.g., audiovisual, road, rail, postal-courier), as well as for sectors that already had been more popular targets in GATS offers, e.g.,

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<sup>25</sup> See also Agata Antkiewicz and John Whalley (2005), "China's New Regional Trade Agreements",

professional, financial services. One exception is health services, where PTA commitments do not appear to go very significantly beyond what is contained in GATS offers.

**CHART 4: Proportion of Countries Reviewed that Improve their Commitments or Commit for the First Time in Selected Sector Groups (Mode 3)**  
**(when comparing GATS offer to the GATS schedule ("GATS") and the PTA commitments to the GATS offer ("PTA"))**



█ Proportion of countries reviewed that have commitments in the sector grouping but have not improved upon them.  
█ Proportion of countries reviewed that have commitments in the sector grouping and that have improved upon them.  
█ Proportion of countries reviewed that have undertaken commitments for the first time in the sector grouping.

## **PART II: A CLOSER LOOK AT THE CONTENT OF GATS+ COMMITMENTS IN SELECTED SECTORS**

This Part pursues the examination of GATS+ commitments by looking in greater detail at the content of the new/improved PTA commitments. It does so by focusing on advances in a sample of sectors: financial services, distribution, audiovisual, telecommunications, education, and professional services.<sup>26</sup> The sectors selected include some infrastructure services that have already attracted many GATS commitments/offers (e.g., telecom, financial), as well as some others that have proved more difficult in multilateral negotiations (e.g., education, audiovisual). The last section focuses on examples of actual liberalization across all sectors.

### **A. Financial Services**

When it comes to trade negotiations, financial services has always been considered a special and controversial sector because of its strategic importance for economic development and its political sensitivity. Despite these characteristics, finance is one of the sectors where WTO Members have made more commitments – more than in any other sector grouping except tourism. The 29 WTO Members whose PTA commitments were reviewed for this paper had already made some commitments on financial services at the WTO before negotiating these preferential trade agreements (PTAs). The sectoral coverage was however variable: while all developed countries had made commitments in all sub-sectors of financial services; developing countries had tended to take commitments on insurance and core banking services<sup>27</sup> rather than in capital-market related services.<sup>28</sup> Stronger commitments were in general made under mode 3 (establishment) than under mode 1 (cross-border trade). With few exceptions, multilateral commitments on financial services did not involve real

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<sup>26</sup> We sometimes make reference in our analysis to plurilateral requests – a process envisaged in the Hong Kong Ministerial Declaration. While these have not been notified to the WTO Secretariat nor circulated to the whole WTO membership, various internet sites, e.g., from NGOs or business associations, provide copies of such requests. See, for example, <http://www.uscsi.org/wto/crequests.htm>.

<sup>27</sup> Deposit taking, lending, payment and money transmission services, financial leasing, and guarantees and commitments.

<sup>28</sup> Trading in securities, underwriting, and asset management.

liberalization when they were undertaken.<sup>29</sup> In the best of the cases, they represented bindings of existing levels of access. Significant restrictions remained, particularly with regard to types of legal entity through which services can be supplied (the branch v. subsidiary debate), foreign equity limitations, and limitations on the number of suppliers, including monopolies. This picture has not changed significantly with the submission of offers in the Doha Round. Among the countries analyzed in this paper, only a handful introduced significant changes in their offers on financial services. Among these, Norway's offer is particularly interesting since it is the only developed country that has made a concrete offer to expand its commitments on cross-border trade for some financial services where the consumer is supposed to be sophisticated enough, i.e., cruise vessels, ocean-going fishing vessels, offshore exploration or insurance contracts regarding domestic companies with an activity of at least 10-man-years or annual sales above a certain threshold. The other countries having made offers on financial services proposed to eliminate or reduce foreign equity limitations on different financial activities, although sometimes not even matching the actual practice (e.g. India on banking services).

(i) *A Diversity of Liberalization Modalities*

Unlike for other sectors, the sensitivities surrounding financial services have translated into different liberalization modalities for financial services in different agreements. One modality has been to explicitly exclude the sector from the PTA (e.g. Chile-El Salvador; Chile-Costa Rica; Chile-Korea). Sometimes, this exclusion is accompanied by a commitment to review the situation after the entry into force of the PTA (e.g. Chile-EFTA). A variation of the previous approach is to avoid sectoral exclusions from the scope of the agreement, but to exclude the sector from the initial schedules of market access commitments, with the promise to include it in future rounds of negotiation (e.g. Thailand-Australia).

Another modality is to develop an additional chapter or annex that clarifies or elaborates upon more general provisions in the PTA for the sake of trade in financial services

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<sup>29</sup> Excluding the most recent accessions to the WTO (e.g. China), current commitments on financial services date back, for most WTO Members, to 1997 (end of the so-called extended negotiations). In some cases, however, commitments date back to 1993 (end of the Uruguay Round) or to 1995 (end of the first extended negotiation on financial services).

(e.g. Japan-Singapore; Australia-Singapore; EFTA-Singapore; Japan-Malaysia; Singapore-India). Still another modality is to develop a separate, self-contained, chapter on financial services that governs all aspects of trade in financial services. Such chapters become therefore a sort of agreement within the agreement. This approach has been followed by the US in all its PTAs, and also by EFTA-Mexico; EC-Mexico; EC-Chile; Panama-El Salvador; Japan-Mexico; and Korea-Singapore.

PTAs also differ as to the liberalization approach adopted: positive list, negative list, and a combination of the two. Negative list approaches have been followed in the Panama-El Salvador, and Australia-Singapore PTAs. Positive list approaches *à la GATS* have been followed in a number of agreements, e.g., by Japan-Singapore, EC-Chile, EC-Mexico, EFTA-Mexico, EFTA-Singapore, China-Hong Kong, China-Macao, Japan-Malaysia, Korea-Singapore, and India-Singapore.

In all its PTAs, the US has used a combination of these approaches, with variations depending on the mode of supply. These PTAs contain a provision on market access for financial services modelled on GATS Article XVI, but which only apply to mode 3, and whose liberalization is subject to the traditional negative list approach (establishment is allowed in all financial service activities unless a reservation is made). Cross-border trade, however, is subject to a different approach, similar to the one adopted in the WTO Understanding on Commitments in Financial Services - i.e., the listing of non-conforming measures for a specified (positive) list of financial services sub-sectors.

#### *(ii) How Much Further than GATS?*

PTAs generally provide for significant improvements over GATS commitments, sometimes even leading to real liberalization of the market. The advances in PTAs have in general well exceeded the offers made in the context of the Doha Round, and in some cases – particularly in the US PTAs – have matched the proposals in the plurilateral requests made pursuant to the Hong Kong Ministerial Declaration.<sup>30</sup>

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<sup>30</sup> The plurilateral request on financial services was sponsored by Australia, Canada, Chinese Taipei, Ecuador, EC, Hong Kong China, Japan, Korea, Norway, and the US. The market access objectives for Mode 1 are the following: undertake commitments for MAT insurance (marine, aviation and transport insurance); reinsurance; insurance intermediation; insurance auxiliary services; financial advisory services and financial information and data processing services; and provide for additional liberalization, especially where the

Agreements following a GATS-type approach to liberalization have tended to produce more limited results, either in terms of new bindings or in terms of further liberalization. PTAs following a negative list (Panama-El Salvador) or a hybrid approach (the US PTAs) have tended to produce more significant results. A second general feature is that commercial presence has been clearly favoured as a mode of supply over cross-border trade. With only few exceptions (basically the agreements signed by the US and Panama-El Salvador), PTAs have not led to very significant improvements in bindings for cross-border trade in financial services.

When it comes to cross-border trade in financial services, countries having signed agreements with the US have all coalesced around an implicit model which improves –albeit timidly– on the level of liberalization embedded in the WTO Understanding on Commitments in Financial Services. Therefore, as a rule, these countries have accepted commitments on the cross-border supply of marine, aviation and transport (MAT) insurance; reinsurance; services auxiliary to insurance; provision and transfer of financial information and financial data processing; and advisory and other auxiliary financial services relating to banking. In addition, most of them (including the US itself) have accepted to go even further by assuming commitments on insurance intermediation (broking and agency) and on the cross-border provision of portfolio management services by asset management firms to mutual funds located in any of these countries. This template of commitments on mode 1 matches the plurilateral request made at the WTO by the US, among others, as explained earlier. For some of the US trading partners, these cross-border commitments will require further liberalization. For example, Bahrain and Chile will allow the cross-border supply of MAT insurance (including brokerage of those services) one year after the entry into force of the PTA; while Morocco will allow cross-border supply of MAT insurance (including brokerage of those services) two years after entry into force. Moreover, as part of its commitments with the US, Morocco will eliminate mandatory cession requirements in no more than 8 years. Moreover, for some of them (e.g. Dominican Republic, El Salvador, Guatemala, Nicaragua) the commitments on the cross-border supply of portfolio management services by US asset

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consuming agent is sophisticated, for example, an institutional consumer of securities services. The objectives for Mode 3 include undertaking commitments for all financial services sectors, encompassing rights to establish new and acquire existing companies, in the form of wholly-owned subsidiaries, joint ventures and branches; and removing limitations such as monopolies, numerical quotas or economic needs tests and mandatory cessions.

management firms will require the introduction of regulatory frameworks on collective investment schemes, which are currently not regulated in these countries.

Foreign equity limitations have been generally barred from these agreements, with the exceptions of India, Malaysia, Morocco, and Thailand.<sup>31</sup> Some progress has been made with regard to restrictions on the form of legal entity through which foreign financial institutions can access local markets, although subsidiaries continued to be preferred over branches by some developing countries participating in these PTAs. The US is the only trading partner that has made significant progress in this area by prompting important commitments to allow branching in Chile (life and non-life insurance), Australia (non-life insurance), El Salvador (all insurance services), Honduras (all insurance services), Colombia (insurance and banking), Costa Rica (insurance), Dominican Republic (direct insurance and reinsurance), Guatemala (insurance and banking), Morocco (life and non-life insurance), and Nicaragua (insurance).

The question can be raised as to whether these improvements in bindings represent real liberalization. The answer must be that as far as the agreements signed by the US are concerned, these commitments represent in many cases real liberalization. As a matter of fact, many of them –both on cross-border and establishment – have been undertaken by US trading partners as pre-commitments, with specific timeframes for the phasing out of restrictions in place. In the case of Costa Rica, for example, the PTA signed with the US contains the commitments to fully liberalize the insurance sector (currently under a state-owned monopoly) in two stages by 2011.

## B. Distribution Services

While distribution is a key infrastructure service, with significant impact on goods trade and consumer welfare, it is one of the services sectors where WTO Members have fewest commitments (52 schedules). Only 39 developing country Members (about a third of WTO Members from that group) have commitments in this sector. Offers submitted as part of the Doha Round did not significantly change that state of affairs. The PTAs reviewed

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<sup>31</sup> Thailand has no commitments on financial services in its agreements with Australia, and New Zealand.

have, in contrast, brought about a number of advances over GATS schedules/offers, most notably through the undertaking of commitments from some developing country Members that had none or only limited ones. In PTAs at least, the gap between the economic importance of the sector and its treatment under liberalization obligations is not so large as in the GATS. Apart from China, the countries that have undertaken significant GATS+ commitments in PTAs have all been involved in preferential agreements with the US.

Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Morocco, and Nicaragua, which had no GATS commitments in the sector - nor had made offers except for one -, all undertook PTA commitments across all aspects of distribution services (retailing, wholesale trade, franchising, commission agents' services). These commitments provide either for full openness (Guatemala, Chile, Nicaragua) or for a few circumscribed limitations, e.g., restrictions on artificrafts for Colombia, monopolies for such products as sugar for the Dominican Republic, restrictions on oil and derivatives for Costa Rica. Bahrain also took commitments across the board, with local presence requirements for wholesale trade and retailing with respect to cross-border trade. These new commitments largely meet the expectations of those WTO Members with export interest in distribution, as they are exempt from the barriers felt to be most important for this sector, such as limitations to foreign equity participation, economic needs tests, and broad and numerous product exclusions.

In addition, a number of developing countries which already had some GATS commitments in the sector significantly improved their bindings. In its PTA with the US, Oman permitted foreign nationals to own up to 100% of equity in any established retail enterprise valued at greater than \$5 million. In contrast, Oman's prevailing multilateral commitments limit foreign ownership of any enterprise to 49%. In addition, the PTA explicitly provides for future liberalization by specifying that, starting in 2011, full foreign ownership will be permitted for enterprises of more than \$1 million.

China, whose openness of the distribution market was a key issue in its accession negotiations, provided Hong Kong and Macao with a number of improvements over GATS in relation to commission agents' services, wholesale trade and retailing under mode 3. The two agreements provide for certain product exclusions to be phased-out more quickly than under

multilateral commitments. Furthermore, restrictions, listed in GATS, that prevent foreign wholly-owned operation of multi-product chain stores with more than 30 outlets, have been waived.

Thailand, an important emerging market in this sector, only has GATS distribution commitments in commission agents' services along with a 49% foreign equity limitation applying to all sectors. In its PTA with Australia, it permitted up to 100% foreign equity participation for wholesale and retail trade of products manufactured by Australian companies in Thailand. Singapore proposes new commitments on retailing, which are generally liberal despite some restrictions on pharmacies and certain products such as medical goods. Singapore's PTAs with the US, Australia, and Korea provide for greater product coverage than in its PTAs with other countries.

Improvements over GATS for other countries involved in PTAs are smaller in nature. For example, Australia withdrew restrictions on the sale of pharmaceutical goods in its PTA with the US (but not in its PTA with Singapore); Korea removed restrictions under mode 1 for pharmaceutical and medical goods in its PTA with Chile (but not in its PTA with Singapore); New Zealand and Mexico offer new commitments on franchising; Peru binds full openness under mode 1 (which was unbound in GATS) and undertakes new commitments on commission agents' services, except for articrafts; Japan reduces the number of product exclusions compared to GATS (e.g., rice under mode 3).

Despite PTA advances, important target countries in the GATS negotiations on distribution - because of their market size and the existence of significant restrictions - such as Malaysia and India, have not provided for improvements over either their GATS offer or over their lack of offer or commitments in this sector in the case of Malaysia. Panama, where retailing is essentially reserved to nationals, has maintained such restrictions in its PTA with El Salvador.

The US already had full commitments on distribution in the GATS. PTA commitments undertaken by the EC, Norway and Switzerland do not very significantly go beyond their GATS schedules/offers.

## C. Audiovisual Services

As is well known, audiovisual services have been a sensitive issue in the WTO, where key Members have traditionally held very divergent views. Indeed, Canada and the European Communities, in particular, have taken the position that audiovisual services, because of the cultural aspects of the sector, should not be subject to liberalization rules and, thus, have abstained from undertaking commitments or making offers. Others, including the United States, feel that trade rules are compatible with cultural objectives and consider that trade in audiovisual services promotes cultural diversity.<sup>32</sup> Not surprisingly, and given the political sensitivities underlying these views, audiovisual services have not attracted commitments nor offers from a significant share of the membership (26 Members have commitments, 6 have made offers).<sup>33</sup> In comparison, PTAs appear to have provided for much more significant advances.

### (i) PTAs involving the US

The PTAs reviewed highlight that the United States, the main *demandeur* and home to leading international suppliers, has made significant headway in terms of obtaining certain guarantees of access in this sector. Indeed, each of the US's PTA partners, all of which had no audiovisual commitments at the WTO (nor offers for all except one), have undertaken commitments in the various areas of audiovisual services, i.e., movie-related, TV and radio-related, and sound recording, although often with many limitations: Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Morocco, Nicaragua, Oman, Peru, and Singapore. With these, the number of WTO Members with commitments on audiovisual in either PTAs or the WTO has gone up by more than 50%! Clearly, for the US, progress on the audiovisual front appears easier than in the WTO, where the undertaking of commitments by the membership might prove more difficult given the stance taken by certain others Members in relation to politically sensitive issues of culture.

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<sup>32</sup> See, for example, TN/S/W/49: "Joint Statement on the Negotiations on Trade in Services", Communication from Hong Kong, China; Japan; Mexico; The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; and the United States, 30 June 2005.

<sup>33</sup> For more information on issues relevant to negotiations in this sector, see: Martin Roy (2005), Audiovisual Services in the Doha Round: "*Dialogue de Sourds, the Sequel?*", Journal of World Investment & Trade, December 2005, Vol. 6, No. 6, pp. 923-952.

In general, the commitments taken by the US's PTA partners tend to have less restrictions attached to their commitments in movie-related services (production, distribution, projection) and sound recording than in services related to TV and radio. Commitments on sound recordings are typically without limitations. Only Morocco, Colombia, Peru, Dominican Republic, and Costa Rica have maintained market access restrictions in relation to movie-related services (apart from discriminatory subsidies, which are typically permitted in US-type agreements). In any event, none of the PTAs allow the imposition of restrictions on the number of cinema theatres or their level of foreign equity participation.

Regarding commitments on services relating to television and radio, the situation is quite different; the maintenance of a number of restrictions - including content quotas - is the norm rather than the exception, although, at the same time, a level of predictable access is granted. Although the approaches taken by individual US PTA partners differ, restrictions listed tend to be more numerous for free-to-air television, e.g., content quotas and foreign equity limitations (including by the US for the latter). In contrast, more liberal access is often granted where the US likely has more interests, e.g., satellite TV, foreign programming for cable TV, and interactive audio/video services. These are indeed areas where regulatory regimes are often less restrictive, including because these are new services, where local capacity is sometimes lacking, and because content quotas carry different policy implications in the light of technological developments permitting increasing consumer control over content and expanding shelf space. From the US perspective, there is value in locking-in the current open access in these areas and ensuring significant openness for future developments in digitally-delivered content.

Among the reservations listed by the US's PTA partners for these services activities, Colombia explicitly provides for future liberalization by guaranteeing that existing restrictions on certain concessions for subscription television will cease after 31 October 2011.

Overall, the audiovisual commitments undertaken by the US's PTA partners, even if not free of restrictions, appear to provide significant value-added for the US since discussions on this topic in the WTO face some strong resistance. Even if the target countries are of course not all the same, the commitments secured by the US in these PTAs appear to

generally exceed the objectives sought by the group of WTO *demandeurs* on audiovisual services in their plurilateral request, which does not even touch upon television/radio-related services.

(ii) *PTAs not involving the US*

Certain of the commitments undertaken by Members not party to PTAs with the US also include notable improvements over those undertaken or offered in the GATS. China has offered improvements in all subsectors of audiovisual services in its PTAs with Hong Kong China and Macao. For movie projection and sound recording, it raises the foreign equity limit from 49% in its GATS commitment to 100% in the PTAs. Concerning movie distribution, it permits foreign equity participation up to 70%; the commitment also covers the distribution of certain movies, while China's GATS commitment is in contrast limited to the distribution of audiovisual products other than movies. China also undertakes some limited commitments on services relating to TV transmission and production, where it had no GATS commitments, e.g., regarding jointly produced TV dramas.

Panama, Korea and Mexico also provide for certain significant GATS+ commitments. For example, Mexico goes beyond its GATS schedule/offer by not maintaining any of the restrictions for movie-related services that it had listed at the WTO, e.g., screen quotas for domestic films and foreign equity limit for motion picture projection services.

Other WTO Members have not gone beyond their GATS commitments in the PTAs. This is the case for Japan, India, Malaysia, New Zealand, Thailand, which already have GATS commitments in the sector - although of much varying depth -, as well as those that had abstained from taking commitments in the sector at the WTO, i.e., the European Communities and EFTA Members. In the case of the European Communities, the sector is even excluded from the services chapter's scope.

It can also be noted that a number of countries (e.g., Australia, Singapore, El Salvador, Chile, Korea) appear to have provided different guarantees of access in their various PTAs. When the US is involved as a PTA partners (e.g., Australia), it always gets the better treatment.

## **D. Education Services**

Education services in the GATS has always been the subject of much heated public debate. For example, some interest groups consider that the GATS exclusion of services "supplied in the exercise of governmental authority" lacks clarity in view of the range of public-private institutions that exist in most education systems around the world today. Given the sensitivity of the sector, it is thus not surprising that education is one of the sectors that has attracted fewest commitments in the GATS. Only 47 WTO members (counting EC15 as 1) have taken a commitment in at least one of the five education sub-sectors (primary education, secondary education, higher education, adult education, and other education services). The offers submitted so far in the Doha Round have not significantly changed that state of affairs.

In terms of GATS+ commitments in PTAs, there is a stark difference between those countries which negotiated with the United States and those that did not. In the case of the former, the PTAs have resulted in significant liberalization commitments. The results are often dramatic as most of the countries which negotiated with the US previously either had no, or only very limited, GATS commitments in education services.

### *(i) PTAs involving the US*

All of the countries that signed PTAs with the US undertook better education commitments than in their GATS schedules/offer. In terms of countries with no or only very limited GATS bindings, they tend to fall into three main groups. The first includes those countries (El Salvador, Guatemala and Oman) which took PTA commitments across all five education sub-sectors without limitations.<sup>34</sup> Of these countries, only Oman had GATS commitments in education. The second are those which took PTA commitments across all education sub-sectors but subjected them to a reservation allowing to maintain existing or undertake new restrictions in relation to public education.<sup>35</sup> Countries falling within this group include Bahrain, Colombia, Dominican Republic, Morocco, Nicaragua and Peru.

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<sup>34</sup> Services chapters of US-type agreements also include an exclusion for "services provided in the exercise of governmental authority".

<sup>35</sup> Such Annex II-type reservation typically covers public education services to the extent that these are social services maintained or established for a public purpose/interest.

Among them, only Colombia and Peru had included education services in their offers. In the third group, all sub-sectors are committed, but additional restrictions not relating to public education are imposed. Costa Rica and Honduras, for instance, committed all sub-sectors, but adopted nationality requirements for faculty and administrative staff.

Other PTAs involving the US provide for relatively fewer improvements. Chile, for example, only took commitments under mode 3 and kept the right to impose any measures relating to natural persons supplying education. Singapore took new commitments in primary, secondary and higher education, and improved the sector coverage of other education services, but reserved the right to impose any measures in relation to the provision of primary and secondary education to Singaporean citizens. Mexico took new commitments on adult education with 49% foreign equity limitation. Australia took a new commitment in adult education and improved the GATS bindings in "other education services" by not limiting it solely to "English language". The US's PTA commitments do not add significantly to its GATS schedule/offer. While there are new commitments on primary and secondary education, these are accompanied by a public education carve-out that most likely diminishes their practical relevance.

Notwithstanding the "public education" reservation, commitments taken by US PTA partners would, overall, still have value.<sup>36</sup> There is after all a growing private sector market for higher and adult education supplied through cross-border trade (mode 1) and commercial presence (mode 3). The "public education" reservation certainly has more implications for primary and secondary education, although the private sector share for this part of the education sector tends to be smaller. Moreover, while cross-border education is assuming greater importance for higher and adult education, it is unlikely to be as commercially relevant for primary and secondary education. This would appear to be supported by the plurilateral request on education services, which targets only private higher education and private other education services. Although target countries are not always the same, PTA commitments on private education for the majority of the countries reviewed also tend to meet the objectives of the plurilateral request, namely, full commitments for cross-border trade and commercial presence.

(ii) *PTAs not involving the US*

PTA commitments taken by countries that have not negotiated with the US provide for some improvements, although to a much lesser extent as compared to the above group of countries, both in terms of the number of countries going beyond GATS and the depth of the new/improved commitments.

For example, Thailand improved upon its GATS schedule/offer by allowing up to 60% (compared with 49%) foreign equity participation for higher education services. Panama added to its GATS schedule/offer on education by taking commitments on private education for all sub-sectors, with only a reservation preserving the teaching of civic history and national history to Panamanians. Japan expanded the sector coverage for primary education under mode 3. Korea provided certain improvements to its education bindings in its GATS schedule/offer, for both modes of supply. Malaysia made a small improvement by adding some criteria to its economic needs test for higher education. Other countries such as China, EC, EFTA Member States, India and New Zealand provide for more limited or no GATS+ commitments in their PTAs.

It can be noted that a number of countries (e.g., Australia, Chile, Japan, Korea and Singapore) appear to have undertaken different commitments in their various agreements. For instance, Australia did not give Singapore the same improvements as it did to the US for adult and other education. Chile gave the same GATS+ commitments to all PTA partners, except the EC and EFTA. Singapore gave the same GATS+ commitments to the US, Australia and Korea, but did not extend them New Zealand, Japan, India and EFTA. Despite the variations, overall, as a general rule, when the US is involved, it always gets the better treatment as compared to other PTA partners. Apart from Thailand which took a commitment to phase-in a 60% equity limitation as from January 2005, this is not a sector where there has been explicit liberalization.

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<sup>36</sup> The formulation in most PTAs involving the US is to exclude "public education" to the extent that they are social services established or maintained for a public purpose.

## **E. Telecommunication Services**

Unlike for other sectors (e.g., distribution, education), PTA negotiations on telecommunication services have benefited from the sound starting point provided by the far-reaching commitments already made by many WTO Members, including most of the countries examined in this paper. Indeed, as a result of the extended negotiations concluded in February 1997 at the WTO, an important number of WTO Members committed to opening their national markets to international competition, thus removing the more important market access barriers.

For example, in the case of fixed public voice telephony, among the countries examined in this paper, most of them had made commitments at the WTO in all market segments (local services, domestic long distance, and international long distance), at least on a facilities-basis but sometimes also on a resale basis: Australia (with foreign equity limitations for Telstra); China (with foreign equity limitations); Dominican Republic; El Salvador; EC (with foreign equity limitations in France and Portugal); Iceland; Japan (with foreign equity limitations for NTT/KDD); Korea (with foreign equity limitations for both KT and other suppliers); Malaysia (with foreign equity limitations, and confined to the number of suppliers at the time); Mexico (with foreign equity limitations); New Zealand (with limit for single foreign investor in NZT); Norway; Oman (with foreign equity limitations until 2005); Peru; Singapore (with foreign equity limitations); and the US (with foreign equity limitation for radio licences).

Others had left one or more market segments unbound or subject to a monopoly, such as Chile for local services; Colombia, for national and international long distance services; Guatemala for domestic long distance services, India for international long distance services; and Morocco and Nicaragua (for all of them). Bahrain, Costa Rica, and Honduras, the three of them with monopolistic regimes at the time, had not made any commitments at the WTO, while Liechtenstein and Panama did not have commitments on basic telecommunication services.<sup>37</sup> Among the countries that did make commitments on basic telecommunications, sectoral coverage could still be improved (e.g. China, India, Mexico, Morocco, Nicaragua, Singapore, and Thailand).

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<sup>37</sup> Panama had a monopoly on basic telecommunication services at the time.

In the case of value added services, some of these countries reviewed had not made any commitments at the WTO (Dominican Republic, El Salvador, Guatemala) or had only made limited commitments in terms of sectoral coverage (Chile, Morocco, Singapore, Thailand).

PTA negotiations have certainly allowed to close the gap between the commitments and the actual practice, which had continued to evolve towards further liberalization after the 1997 multilateral negotiations. Most of the countries examined made commitments in their respective PTAs, covering all telecommunications services (both basic and value added services), and with fewer limitations than those listed at the WTO. In some cases, these more 'liberal' commitments were simply a reflection of previous autonomous liberalization, while in other cases countries made phase-in commitments to open up their markets partially or completely, thus using the commitments as a lock-in mechanism for reforms that were already under way.

The cross-border supply of basic telecommunication services has been generally bound with no limitations in the PTAs examined, with only few exceptions (e.g. China, Costa Rica, India). In the case of basic telecommunication services supplied under mode 3, countries can be divided into (i) those that made commitments similar to those in the GATS (e.g., China, EFTA countries, El Salvador, Guatemala, Japan, Mexico, New Zealand, Oman, and Thailand); (ii) those that made their bilateral commitments match their WTO offers in the Doha Round (e.g. Australia, India, Korea, Malaysia, and the US); (iii) those that improved on their GATS schedules/offers (e.g., Chile, Colombia, Dominican Republic, EC, Morocco, Peru, and Singapore); and, finally, (iv) those that made new commitments in their PTAs without making or offering any commitment at the WTO (e.g. Bahrain, Costa Rica, Honduras, Nicaragua, and Panama).

In some of these cases, improvements on the multilateral commitments appear quite significant. For example, Chile allowed US suppliers access to its market for local basic services; in Colombia, resale of international telecommunication traffic will be permitted as of 2007; Nicaragua and Honduras will completely eliminate the exclusivity for their respective incumbents by the end of 2005; and Bahrain will eliminate the two-operator limit on the number of mobile telecommunication suppliers by the end of 2005. Costa Rica, which

had a monopoly on telecommunication services, committed to allow US telecommunications services providers, on a non-discriminatory basis, to supply direct private network services and Internet services no later than January 2006, and mobile wireless services no later than January 2007. Such types of commitments did not only appear in the US PTAs. Other interesting commitments may be found in bilateral agreements between developing countries. In its agreement with El Salvador, Panama committed to eliminate its monopoly on basic telecommunication services by January 2003.

It is clear that the value added for telecommunication services of many of these PTAs can also be found elsewhere – in the regulatory disciplines. The US PTAs, for example, combine elements of the NAFTA, the GATS Annex on Telecommunications, and the WTO Reference Paper, to form a comprehensive set of regulatory disciplines, which are GATS+ in some areas (in areas such as co-location of interconnection equipment, resale, number portability, and leased circuits services), but whose study goes further than the scope of this paper.

## **F. Professional Services**

Most trade in professional services takes place via the temporary presence of natural persons, which - as a mode of supply – is outside the scope of this paper. The importance of mode 4 for professional services sometimes makes it difficult to assess the real value of the commitments made in PTAs with regards to modes 1 and 3 (the focus of this study). For example, while establishment rights are valuable, they lose importance when the capacity to transfer professionals from the home country are limited. Another difficulty in providing an overview of GATS+ commitments for professional services is the sheer diversity of professional services, which groups together professions with different structures and impediments to trade.

Overall, countries with GATS+ commitments have tended to maintain greater restrictions on legal, medical and dental services, and provide relatively more liberal treatment of architecture, engineering and accountancy services. This is particularly true for those developing countries that either had no or only a few existing GATS commitments and

which concluded a PTA with the US. Countries falling within this category, often took new commitments across all the professions with few limitations - except for legal services, and medical and dental services, which tend to be more restricted. In many of these PTAs, the practice of host country law or representation before a court remains reserved to nationals. With few exceptions, commitments on medical and dental services are often qualified by a reservation allowing future restrictions on health to the extent that these are social services maintained or established for a public purpose/interest. For accounting, architectural and engineering services, the trend has been towards further liberalization with full commitments with no or few limitations, although there are exceptions (e.g., Morocco which has nationality requirements; El Salvador and Costa Rica have residency requirements; Nicaragua requires to supply accounting services through a local firm). It should be pointed out that Central American countries have subjected their PTA commitments with the US on professional services to a reciprocity provision, likely to limit the access granted only to those US states that provide for similar access.

For other developing countries, the improvements are more limited but again the tendency - with a few exceptions (China, Singapore) - is towards greater liberalization of the sector while retaining more restrictions on legal, and medical and dental services. For example, Oman improved upon its GATS bindings for all professional services except legal services where foreign equity is still limited to 70%. India improved upon its GATS schedule/offer in various sub-sectors, although it left legal services uncommitted. Chile improved on its offer by taking full commitments in architecture and engineering, as well as in other professions, but only Chilean nationals are allowed to practise as lawyers. Panama took new and improved commitments under mode 3 across all professions, but left mode 1 uncommitted. China relaxed various limitations under mode 3, including for legal, and medical and dental services. Singapore took a new commitment in legal services and improved other sub-sectors.

For developed countries, there are fewer improvements overall as they often start from a higher level of bindings in the GATS. Australia, for instance, improved on the sector coverage for legal, as well as medical and dental services, but excluded health-services for a public purpose. New Zealand improved the sector coverage for legal services which rather exceptionally already permitted foreign lawyers to practise domestic law, and committed

dental services with nationality limitations. Korea took a new commitment in medical and dental services but took a public health services exclusion. For the EC, commitments do not vary significantly from their GATS offer.

Another group of countries have provided no or limited GATS+ commitments, e.g., Thailand, Malaysia, Japan, EFTA and the US.

It can be noted that a number of countries (eg. Australia, Chile, Japan, Korea and Singapore) appear to have provided different treatment in their various agreements. Overall, as with other sectors, the US tends to always get the best treatment in such situations. It can also be noted that a few countries have commitments suggesting explicit liberalization: Bahrain, for instance, will phase out some local presence requirements within 3 years of the date of entry into force of the agreement and others within 7 years of the date of signature; China will permit wholly owned operations in architectural and engineering as from December 2006; and Singapore committed to modifying its existing laws so as to relax conditions under which US law firms are permitted to provide legal services.

## **G. Examples of Actual Services Liberalization Across Sectors**

It is very difficult to identify with exactitude the extent to which all the trade agreements reviewed lead to real liberalization, i.e., to the removal of applied restrictions. In their PTAs, some countries might have bound the status quo, i.e., the applied regime, or less. Others might have decided, in some instances, to withdraw certain restrictions and, accordingly, not to list them as reservations or limitations in the agreement. Agreements do not indicate whether the level of openness guaranteed was already applied, or not, before the agreement came about, and since when. One could only ascertain the level of actual liberalization induced by trade agreements by going through the laws and regulations of each country so as to compare the applied regime before and after the conclusion of the agreements.

However, trade agreements will sometimes specifically provide for actual liberalization through commitments providing for the phasing-out of applied restrictions over

time. In a way, such commitments amount to "proofs" of actual liberalization, although it cannot be assumed to represent the only liberalization induced by trade agreements. The PTAs reviewed contain a number of such phase-out commitments. Table 3 lists a number of examples. One notes that the group of countries assuming such commitments is fairly widespread. Most phase-out commitments have been contracted by countries as part of a PTA with the United States, although not exclusively. Financial services and telecommunications are the sectors that seem to have attracted most of these cases, although other sectors are also represented. Finally, for those countries that are party to more than one of the reviewed PTAs, it appears that the phasing-out commitments had sometimes not been undertaken with all negotiating partners.

**TABLE 3: Examples of Commitments Providing for the Phasing-In of Liberalization**

|                  | Sectors               | PTA Commitments Providing for Phasing-out of Restrictions in Place                                                                                                                                                                                                                                                                                                                                                                                                                                  | In PTAs with        |
|------------------|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| <b>Australia</b> | Financial services    | Foreign life insurers will be allowed to operate branches.                                                                                                                                                                                                                                                                                                                                                                                                                                          | US and Singapore    |
| <b>Bahrain</b>   | Business services     | Local presence requirements to be phased-out within 3 years from the date of entry into force of the agreement for advertising; car rental; consultancy and management; and debt collection. For accounting, financial auditing and bookkeeping, architectural and engineering, and services incidental to mining, it will be within 7 years of the date of signature. Branching and entity restrictions in advertising and publishing to be phased-out within 5 years of date of entry into force. | US                  |
|                  | Telecommunications    | The existing 2 operator limit on the number of mobile telecommunication suppliers to expire by 31 December 2005.                                                                                                                                                                                                                                                                                                                                                                                    | US                  |
|                  | Construction          | Local presence requirements to be phased-out within 3 years from the date of entry into force of the agreement.                                                                                                                                                                                                                                                                                                                                                                                     | US                  |
|                  | Financial services    | Foreign insurers will be able to acquire new non-life insurance licenses, with no restrictions, beginning 6 months after the date of entry into force of the agreement.                                                                                                                                                                                                                                                                                                                             | US                  |
|                  | Tourism               | Local presence requirements for travel agencies and tour operators, and travel guide services to be phased-out within 3 years from the date of entry into force of the agreement.                                                                                                                                                                                                                                                                                                                   | US                  |
|                  | Transportation        | Local presence requirements, including for maritime, road and rail transport services, to be phased-out within 3 years from the date of entry into force of the agreement.                                                                                                                                                                                                                                                                                                                          | US                  |
| <b>Chile</b>     | Financial services    | Foreign insurance companies to be allowed to supply marine, aviation and transport insurance one year after entry into force of the agreement on a cross border basis.                                                                                                                                                                                                                                                                                                                              | US and EC           |
|                  |                       | Foreign insurance companies to be allowed to establish branches in Chile no later than 4 years after the date of entry into force of the agreement.                                                                                                                                                                                                                                                                                                                                                 | US                  |
|                  |                       | Asset management by mutual funds, investment funds, and foreign capital investment funds, to be allowed as of entry into force of the agreement, while management of voluntary savings plans will be allowed as of 1 March 2005.                                                                                                                                                                                                                                                                    | US                  |
| <b>China</b>     | Professional services | Wholly owned operations in architectural, engineering, integrated engineering, and urban planning and landscape architectural services to be permitted as from December 2006.                                                                                                                                                                                                                                                                                                                       | Hong Kong and Macao |
| <b>Colombia</b>  | Telecommunications    | Resale of international telecommunications traffic to be permitted as from 2007.                                                                                                                                                                                                                                                                                                                                                                                                                    | US                  |
|                  | Financial services    | Financial companies to be allowed to establish branches no later than 4 years after entry into force of the agreement. Companies will also be allowed to provide cross-border supply of portfolio management services to collective investment schemes no later than 4 years after                                                                                                                                                                                                                  | US                  |

|                           | Sectors              | PTA Commitments Providing for Phasing-out of Restrictions in Place                                                                                                                                                                                                                                                                                                                                                                                                                                              | In PTAs with |
|---------------------------|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
|                           |                      | entry into force of the agreement                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |              |
|                           | Audiovisual services | <p>There will be no restrictions on the number of subscription television concessions at the zonal, municipal and district level once the current concessions at those levels expire and in no case beyond 31 October 2011.</p> <p>Quotas for broadcasting of locally-produced programming on free-to-air national television services on weekends/holidays to be reduced from 50% to 30% from 1 February 2009.</p>                                                                                             | US           |
| <b>Costa Rica</b>         | Telecommunications   | Will allow the following telecommunications services to be supplied directly to the customer: i) private network services, no later than 1 January 2006; ii) internet services, no later than 1 January 2006; and iii) mobile wireless services, no later than 1 January 2007.                                                                                                                                                                                                                                  | US           |
|                           | Financial services   | Will fully liberalize the insurance sector and eliminate the existing monopoly in several phases. Upon entry into force of the agreement foreign insurance companies will have access to the insurance sector on a cross-border basis. After 2008, establishment in Costa Rica, including through branching, will be permitted but restrictions on third party auto liability and on workers compensation will continue until 2011, after which the sector will be fully liberalised.                           | US           |
| <b>Dominican Republic</b> | Financial services   | Foreign life and non-life insurance companies to be allowed to establish branches no later than 4 years after entry into force of the agreement. Currently, collective investment schemes are not regulated in the Dominican Republic. Non-established financial institutions (other than a trust company) will be allowed to provide investment advice and portfolio management services to collective investment schemes located in its territory, as soon as these schemes are regulated.                    | US           |
| <b>El Salvador</b>        | Financial services   | Foreign insurance companies to be allowed to establish branches no later than 3 years after entry into force of the agreement.                                                                                                                                                                                                                                                                                                                                                                                  | US           |
| <b>Guatemala</b>          | Financial services   | Foreign life and non-life insurance companies, as well as brokers and agents, to be allowed to establish branches no later than 4 years after entry into force of the agreement. Currently, collective investment schemes are not regulated in Guatemala. Non-established financial institutions (other than a trust company) will be allowed to provide investment advice and portfolio management services to collective investment schemes located in its territory, as soon as these schemes are regulated. | US           |
| <b>Honduras</b>           | Telecommunications   | Basic telecom services to be fully liberalised by 24 December 2005. Additional mobile operators may also be authorized as from December 2005.                                                                                                                                                                                                                                                                                                                                                                   | US           |
| <b>Morocco</b>            | Financial services   | Foreign life and non-life insurance companies to be allowed to establish branches not later than 4 years after entry into force of the agreement. Apart from reinsurance brokerage, foreign insurance companies will be permitted to supply marine, aviation and transport insurance 2 years after entry into force of the agreement on a cross-border basis.                                                                                                                                                   | US           |
| <b>Nicaragua</b>          | Telecommunications   | Monopoly on basic telecommunication services to be eliminated as of 13 April 2005.                                                                                                                                                                                                                                                                                                                                                                                                                              | US           |
|                           | Financial services   | Foreign insurance companies to be allowed to establish branches 4 years after entry into force of the agreement. However, members of the Board of Directors must be residents in Nicaragua.                                                                                                                                                                                                                                                                                                                     | US           |

|                  | Sectors                                   | PTA Commitments Providing for Phasing-out of Restrictions in Place                                                                                                                                                                                                                                                                                                                                                                                                                                                              | In PTAs with |
|------------------|-------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| <b>Oman</b>      | Distribution                              | Full foreign ownership of retail enterprises worth more than \$1 million to be permitted as from 2011.                                                                                                                                                                                                                                                                                                                                                                                                                          | US           |
| <b>Panama</b>    | Telecommunications                        | Monopoly on basic telecom services to be eliminated by January 2003.                                                                                                                                                                                                                                                                                                                                                                                                                                                            | El Salvador  |
| <b>Singapore</b> | Business services                         | Existing Singaporean laws to be modified so as to relax conditions under which US law firms are permitted to provide legal services.                                                                                                                                                                                                                                                                                                                                                                                            | US           |
|                  |                                           | Foreign power companies will be allowed to supply electricity to non-household consumers in two phases: phase I will be two months after the electricity market opens in the second half of 2002; and phase II will be six months after phase I. In the final phase, scheduled for implementation by 2003, retail sale to the remaining consumers (mainly household consumers) will be fully opened.                                                                                                                            |              |
|                  |                                           | For architectural services, the requirement of "residency" in Singapore shall be phased out by April 2005. The requirement that not less than two/thirds of the directors of a corporation be Singapore registered or allied professionals shall be reduced to 51 % by April 2005.                                                                                                                                                                                                                                              | Korea        |
|                  | Financial services                        | Current ban on new licenses for full-service banks will be lifted within 18 months, and within 3 years for "wholesale" banks that serve only large transactions. Licensed full-service banks will be able to offer all their services at up to 30 locations in the first year, and at an unlimited number of locations within 2 years. Locally incorporated subsidiaries of US. banks can apply for access to the local ATM network within two and a half years. Branches of US banks get access to the ATM network in 4 years. | US           |
| <b>Thailand</b>  | Tourism, education and maritime transport | As from January 2005, equity participation of up to 60% (subject to certain criteria) by Australian investors/service suppliers is allowed in major restaurants or hotels, tertiary education institution specialising in science and technology and located outside Bangkok, and certain maritime cargo services.                                                                                                                                                                                                              | Australia    |
| <b>Peru</b>      | Financial services                        | Foreign non-life insurance companies are allowed to supply marine, aviation and transport insurance 2 years after the entry into force of the agreement. Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services may also be provided on a cross-border basis 2 years after the entry into force of the agreement.                                                                                                                                                       | US           |

## **CONCLUSION**

### **A. Findings**

This paper assessed the extent to which liberalization commitments in the recent wave of PTAs go further than the GATS. Both Part I, which provided an overview of the extent to which countries improved commitments and undertook new ones, and Part II, which looked at the more precise content of the GATS+ commitments in a number of sectors, underscore that preferential agreements have, overall, provided important advances when compared to GATS schedules and, more surprisingly, GATS offers. This tends to confirm the relatively limited breadth and depth of commitments in the GATS and in offers, but also goes against some expectations that PTAs offered little more than GATS.

These advances take the form of new bindings in sectors that had remained uncommitted and improved bindings in sectors that were already committed in the GATS schedules/offers. The 'value' or meaningfulness of many PTA commitments is highlighted through:

- At least *status quo* bindings: countries that have used negative-list approaches to scheduling have bound at least the existing level of openness/restrictions for the large majority of sectors. Such predictability is key in attracting investment, but is also important for cross-border trade: it locks-in existing openness and pre-empt protectionism in this fast expanding area.<sup>38</sup> Binding the status quo also seems to provide a better starting point for negotiations aiming to achieve some real liberalization, possibly at the multilateral level. This avoids Members spending time negotiating away the margin between commitments and the applied regime.
- Depth of commitments: the sectoral analysis suggests that the content of the new and improved commitments made in PTAs is often significant, in key infrastructure services such as financial services, but also in more traditionally difficult ones such as audiovisual or education services. The depth of these commitments nevertheless varies considerably between countries, agreements, and sectors. In many cases, the

GATS+ commitments secured in PTAs roughly match or go beyond the plurilateral requests that have been made in the WTO for the sectors reviewed. For example, the US, a key services *demandeur* and also signatory to many PTAs, has gotten very significant access in various services where its industry sees particular interest, e.g., financial services, express delivery, distribution, audiovisual.

- Actual liberalization: Part II provided evidence that a number of PTAs have brought about real liberalization. Indeed, PTAs involving the US typically include a number of commitments providing for the phasing-out of certain existing restrictions over time. In addition, the high number of sub-sectors already committed in the GATS schedule/offer that are further improved in PTAs (as highlighted in Part I) suggest either that the commitments in the schedules/offers did not reflect the applied regime or, if they did, that the improved commitments in the PTAs induced actual liberalization and new commercial opportunities.

While there has been important advances in the PTAs, the picture is nevertheless nuanced, as the paper also highlights areas where the value-added of PTAs is more limited. For one, a number of the countries that are not involved in PTAs with the US – although not all – appear to provide for a more limited set of GATS+ commitments. Second, the larger countries tend, overall, not to go as far beyond GATS as many of the smaller economies, especially developing ones. This might be explained by the imbalance between negotiating partners and by the fact that at least some of the larger countries, particularly developed ones, have less room to improve their GATS schedule/offer than others, at least for the two modes of supply reviewed here. This can also suggest that smaller and developing countries, when negotiating with larger and/or developed countries, perceive their gains as lying in other areas, likely preferential access in goods trade. Third, as a result, the most protected services activities in larger, especially developed countries, remain, despite some improvements on the fringes, largely unaffected by PTAs, e.g., audiovisual for EFTA and the EC, maritime transport and certain professional services for the US, and cross-border trade in a number of financial services for a variety of countries. Fourth, as noted at the outset, while most of the largest countries have become involved in services PTAs, they do not have PTAs amongst

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<sup>38</sup> Aaditya Mattoo and Sasha Wünsch (2004), "Pre-Empting Protectionism in Services: the WTO and

themselves (i.e., China, US, Japan, EC, India). To this day, the multilateral system still remains the main avenue for these countries for resolving services trade issues and negotiating future disciplines.

In addition, the comparison of GATS and PTA commitments has also highlighted that:

- The US consistently get better commitments than others from the same countries
- PTAs using a negative-list approach tend to yield a bigger proportion of GATS+ commitments. This is due in good part to the fact that the US always uses such approach. All those PTAs that tended to show lesser proportions of new/improved commitments used a positive-list approach
- Overall, PTAs provided for advances in sectors that had attracted less commitments/offers in the GATS, just as in those sectors that had attracted more commitments/offers

## B. Implications

These findings lead us, in guise of conclusion, to make a number of observations in relation to possible implications of this phenomenon, in particular for the multilateral trading system.

There are a number of reasons why preferential arrangements in services could potentially be less harmful than in goods trade. One reason is that reducing barriers to trade does not lead to a loss of revenue as is the case for tariff reductions.<sup>39</sup> Another one is that the nature of services regulations is such that once removed for one country, many services restrictions will not continue to be applied to others, at least beyond the short-term. Indeed, many services restrictions are embedded in regulatory regimes and governments will often not put in place different regulatory regimes for different supplier countries. While the propensity to extend *de facto* the preferences granted in PTAs to others is likely greater, a number of measures - especially the more restrictive ones and in particular for mode 3 - can

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Outsourcing", *Journal of International Economic Law* 7: 765-800.

<sup>39</sup> Marion Jansen (2006), "Services Trade Liberalization at the Regional Level: Does Southern and Eastern Africa Stand to Gain from EPA Negotiations?", WTO Staff Working Paper, May 2006.

nevertheless easily be applied on a preferential basis: foreign equity limits and restrictions on establishment (e.g., limits on the number of suppliers through ENTs on the granting of licenses).

Preferential deals can bring benefits to participants by allowing them to undertake important reforms leading to the removal of costly domestic restrictions. Those countries that have negotiated with the United States may have used domestic support flowing from preferential goods access to the US market to overcome resistance to reforming protective policies in some services areas. Nevertheless, the findings of this paper beg the question as to why countries undertook such commitments in PTAs and not in the GATS? First, the political impetus often driving bilateral trade agreements might have helped to overcome important impediments to multilateral services liberalization, i.e., the resource implications for smaller countries of negotiating disciplines in such a complex and far reaching area (four different modes, many different types of trade barriers, etc.); and institutional resistance and/or disengagement from those many non-trade ministries responsible for services trade policy-making.<sup>40</sup> Second, services exporters might perceive their commercial gains more clearly in the relatively more simple bilateral deals in comparison with multilateral negotiations with more than a hundred countries, especially if they get preferential access over their competitors from other service-exporting countries. This added simplicity in terms of the identification of export interests is also likely to be attractive to political representatives. Third, disappointment with the Doha services negotiations, as well as concerns about free-riding, might have encouraged some countries to use PTAs to meet their desire to bind an applied regime of openness or encourage some further reforms.

Preferential trade agreements are sometimes painted as having no significant downsides since some liberalization is better than none. However, services PTAs also have costs:

1. Preferential access in services can engender important costs for non-parties because it may provide lasting advantages to first movers that might be hard to reverse through subsequent extension of access to other countries. This results from the limited number of suppliers that can naturally operate in certain services markets (e.g.,

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<sup>40</sup> See Adlung and Roy (2005), op.cit; Alejandro Jara and Carmen Domínguez (2006), "Liberalization of Trade in Services and Trade Negotiations", *Journal of World Trade*, Vol. 40, No. 1, pp. 113-127.

financial services, telecoms); location-specific sunk costs of production are important in many sectors.<sup>41</sup> Unlike for goods, subsequent extension of the preferences to other countries with more efficient producers might not necessarily be sufficient for these to enter the market occupied by the suppliers benefiting from first-mover advantages.

2. Preferential access in services as a result of PTAs likely occurs more often than might be expected or detected: the amount of discretion sometimes involved in the granting of licenses makes it difficult to assess whether decisions directly result, or not, from PTA commitments, especially for activities where there are no GATS commitments whatsoever. Such advantages can be a factor that makes PTAs more interesting for participants and that helps explain why the proliferation of PTAs sometimes appears like a competitive race.
3. Concerns in the goods area about a spaghetti (or noodle) bowl of multiple and differing rules of origin do not arise to the same extent in services. Rules of origin in services PTAs are often liberal: anyone established in a party's territory - even if owned by foreigners - benefits from the PTA, except in special circumstances.<sup>42</sup> A notable exception relates to the agreements signed by China where the rules of origin are more stringent, e.g., the need to have had substantive business operations in the country for at least 3 years. In services, the costs associated with the complexity arising from differing regulations might relate not so much to rules of origin but rather to the levels of market access granted. Not only are market access commitments in services much more complex than tariff lines, but the review of PTAs has highlighted that certain countries take different commitments in different PTAs. The review also revealed that some countries had, in some instances, listed restrictions in their PTAs that they had not scheduled in their GATS schedules.
4. Another possibly important - although more difficult to assess - consequence of the proliferation of PTAs relates to its implications for future liberalization at the multilateral level, where, it is generally agreed, gains would be greater than through preferential deals. Gains from multilateralism flow, among other things, from

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<sup>41</sup> Carsten Fink and Aaditya Mattoo (2004), "Regional Agreements and Trade in Services: Policy Issues", *Journal of Economic Integration*, 19(4): 742-79.

multilateralizing the liberalization undertaken bilaterally, but also from addressing restrictions that cannot be (agricultural subsidies) or at least have not yet been (remaining restrictions of the largest economies) dealt with at the bilateral or plurilateral levels.

- For one, it may well be that the negotiations of PTAs have to some extent diverted resources and attention away from the Doha services negotiations. Many of those countries that have made the most new and improved commitments in their PTAs appear to be countries that have, in comparison, made rather modest offers, often to supplement already modest GATS commitments. In that respect at least, this seems to contradict the so-called domino theory (whereby freer trade in PTAs would eventually lead to further liberalization at the multilateral level). One can hope that this gap results from diverted attention/resources that are temporary and that the 'domino' effect will have an impact with some delay, but there are also risks that this does not materialize as smaller countries wish to preserve the preferred access that they obtained to larger markets, such as the US's. However, PTAs, once implemented, also generate vested interests that want to maintain their preferential access, although possibly more so in the goods area.<sup>43</sup>
- Furthermore, some of those that have made impressive qualitative jumps in their PTA commitments continue to take defensive positions in the multilateral setting, e.g., invoking limited resources or other difficulties to justify limited offers or engagement in the services negotiations. There is a clear disconnect between practice and discourse.
- In addition, given the large gap between PTA commitments and GATS offers for a number of countries, one wonders whether the ongoing PTA hyperactivity has not incited some Members to make minimal offers so as to have further negotiating chips (i.e., bindings) to offer in various PTA negotiations. Some may have thought that they would have been pressured to go beyond an

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<sup>42</sup> For example: the established foreign enterprise has no substantial business activities in the party's territory. This is to avoid that non-parties benefit from PTA commitments by setting up mail-box operations.

<sup>43</sup> See Crawford and Fiorentino, op.cit.

ambitious offer because a PTA partner would expect to get more than would be given to non parties.

- One can therefore wonder whether those services offer in the Doha Round that are far from matching PTA services commitments result not only from tactical considerations across Doha negotiating areas, but also from: attention/resources diverted to PTAs, tactical considerations leading countries not wanting to lose negotiating chips, and/or the strength of vested interests wanting to prevent an erosion of preferences.
- There is a risk that the success of certain big *demandeurs* in obtaining significant commitments in PTAs reduce somewhat their appetite for multilateral negotiations on services. While the services market access package that they can hope to get through the WTO is still large because there are many important WTO economies with which it does not have PTAs, the size of these potential 'gains' naturally diminish with each PTA that is concluded. Further, the more countries offer services commitments in PTAs, the less they might use these as bargaining chips in the WTO so as to convince services exporter countries to address agricultural subsidies. In other words, by offering at the WTO what they have offered in PTAs, wouldn't developing countries get much more in return?

What might be solutions to try to ensure that downsides of PTAs are minimized? Naturally, possible distortion and complexity arising from the diversity of different liberalization schedules would be reduced if levels of bindings were improved at the multilateral level. Across the membership, there is ample room to manoeuvre. So as to provide impetus to the negotiations, those involved in PTAs could conditionally offer a level of services commitments closer to the one they agreed to in PTAs. For the WTO membership as a whole, including those Members that have not been so involved yet in preferential services arrangements, the extent of GATS+ commitments in PTAs provides a glimpse of positive outcomes that could emerge from the Doha Round, in contrast with the gloomy picture transpiring from offers on the table so far.

Furthermore, much more transparency should be sought through the WTO.<sup>44</sup> On the one hand, more could be done, in line with this paper (but also for other modes of supply), to look into the content of the liberalization commitments in PTAs and see where they go beyond GATS commitments and to what extent. On the other hand, in addition to greater transparency as regards the content of the PTAs, better surveillance of the implementation of the agreement may prove useful. A proper transparency mechanism regarding implementation would aim to provide a clearer picture as to whether the access granted was being implemented on a non-preferential basis or not, *de jure* and *de facto*. More than a general notification exercise, a more appropriate model might rather be along the lines of China's transitional review mechanism, according to which China has an obligation to provide information on policies affecting trade in services (e.g., changes to laws and regulations, state of play of licensing applications), information which is subsequently reviewed by Members in the specialized WTO bodies overseeing the issues at hand. The same obligation could be imposed on WTO Members having signed PTAs including services obligations and commitments. Only with such kind of information would it be possible to better assess any possible trade diversion since disaggregated trade statistics, by sub-sector, mode of supply and trading partner, are hard to come by in services. For example, information could be provided on the number of licenses - and the nationality of the suppliers that have solicited them - that had been accepted or rejected in a given sector. After all, if PTAs are to reinforce the multilateral system through "competitive liberalization" and Members are committed to multilateral rules, greater transparency can only be beneficial. Such an approach may also be more fruitful than possible revisions to Article V or to further guidance in meeting its criteria.

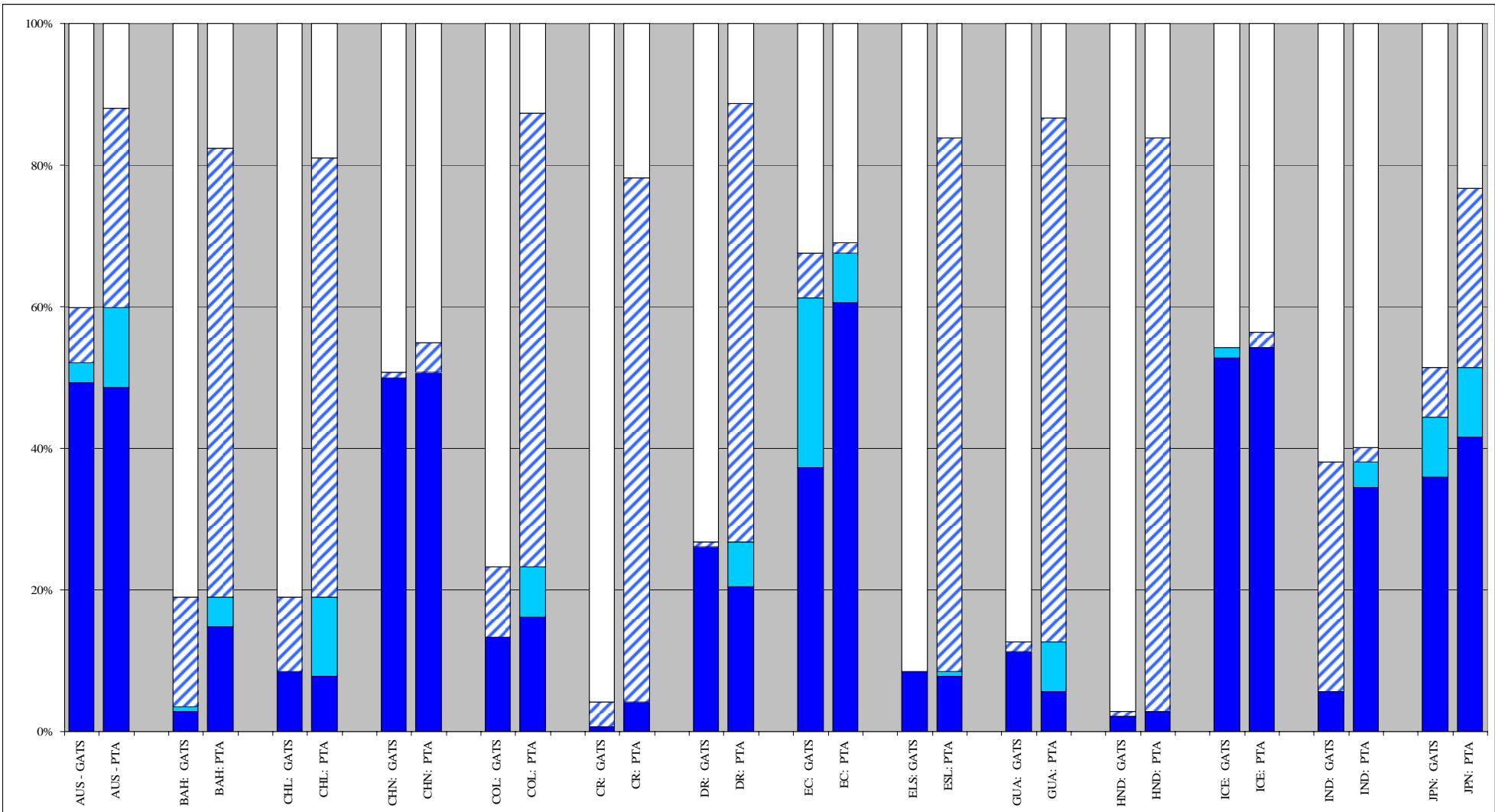
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<sup>44</sup> It can be noted that the WTO Negotiating Group on Rules has adopted a new transparency mechanism for all regional trade agreements, which would be implemented on a provisional basis.

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**ANNEX: Chart 2 (1/2): Proportion of Sub-Sectors with New and Improved Commitments under Mode 1, per WTO Member**  
 (when comparing the GATS offer to the GATS schedule ("GATS") and the PTA commitments to the GATS offer ("PTA"))



|                                                                                                                                                            |                                                                                                                                          |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| <span style="color: blue;">█</span> Proportion of sub-sectors already committed that are not further improved.                                             | <span style="color: cyan;">█</span> Proportion of sub-sectors already committed that are further improved.                               |
| <span style="background-color: #f0f0f0; border: 1px solid black; padding: 2px;"></span> Proportion of sub-sectors that are the subject of new commitments. | <span style="background-color: white; border: 1px solid black; padding: 2px;"></span> Proportion of sub-sectors that remain uncommitted. |

**CHART 2 (2/2)**

