(New) EU Standards in Preferential Services Trade Liberalization

Charlotte Sieber-Gasser*

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1. Introduction

In the past decade, the European Union (EU) has constantly been exporting more services to non-EU countries than it imported, with a (temporary) maximum of services exports of €1.072 trillion in 2019 (Eurostat no date). Therewith, the EU remains the largest exporter of services worldwide.[1] Perhaps due to the underreporting of services trade statistics compared with goods trade statistics, it is comparatively little known that the EU is the undisputed world leader in services exports.[2] It is, thus, no surprise that services trade with non-EU countries still accounted for 25.1 percent of gross domestic product in the EU in 2020, even after a decrease due to the pandemic (World Bank no date). Given its status in the global services market, EU services trade policy, therefore, inevitably has an impact on the global regulatory framework in services trade.

It should not be forgotten that services are not only traded for the sake of trading services, but they are also a key ingredient of successful global value-added chains: They enable high-quality production and are necessary for markets to converge. In an increasingly specialized and globalized economy, essential know-how is often transferred through services, and services therewith are at the heart of overall economic performance (Sieber Gasser 2016, 30). Particularly in a strong service economy like the EU, services trade also accounts for a considerable number of jobs in the market.[3] Liberalization in trade in services therewith serves the purpose of increasing global market access and extending growth opportunities for the EU service industry but at the same time needs to also take into account that an increase in competition within the EU market is might lead to negative spillovers, such as job losses among service suppliers.

1.1 General Agreement on Trade in Services

Contrary to other fields in international trade regulation, services trade rules originate in the multilateral and not in the preferential forum: The first comprehensive set of rules for the liberalization of services trade was established in the General Agreement on Trade in Services (GATS) as part of the Uruguay Round negotiations of the World Trade Organization (WTO) in the late 1980s and early 1990s (GATS 1994). Regulation of and obligations in the liberalization of trade in services were new and largely untested at the time. Hence, the GATS was seen as a steppingstone to further, more elaborate services trade regulation and to an expanding scope of liberalization through subsequent rounds of negotiations. WTO members therefore remained cautious with regard to the level of liberalization to which they committed under the multilateral GATS. Instead, they quickly turned to negotiations of preferential trade agreements (PTAs) in services in parallel to the GATS negotiations and shortly after the conclusion of the GATS, in which they committed to more extensive trade liberalization in services with hand-picked partners, while negotiations at the multilateral level (i.e., the Doha Round) regarding the initially

* Dr. iur. Charlotte Sieber-Gasser, Senior Researcher, Centre for Trade and Economic Integration, Geneva Graduate Institute; Lecturer at the Universities of Zurich and Lucerne.

envisaged gradual modernization of the GATS rules remained blocked until today (Sieber-Gasser 2016, 110–15; Sieber-Gasser 2022, 60–61).

1.2 EU Internal Services Market Liberalization

Services trade within the EU is not as standardized and liberalized as intra-EU goods trade: National legislation continues to create barriers to intra-EU services trade, at times creating complex administrative procedures which may be considered outdated or even unnecessary (see van Leeuwen 2018). The European Commission (EC)—in an effort to fully implement the 2006 Services Directive (EU 2006)—presented, in January 2017, proposals for a services e-card which renders intra-EU trade in services easier, particularly in the sectors of business services and of construction services (EC 2017). However, the proposal failed to secure the required support and agreement in the legislative process and the EC withdrew the proposal in 2021 (European Parliament no date). This leaves the identified unnecessarily burdensome regulatory obstacles to intra-EU services trade unresolved up until today. In this regard, PTAs are actually one way for how the EU can achieve progress also in the harmonization and standardization of *internal* services trade (Fiorini and Hoekman 2020, 265).

In addition, the scope of EU-only competence in services trade in foreign trade policy remained unclear until recently. Typically, the EU would conclude a PTA covering services as a "mixed" agreement, meaning that the PTA had to also be ratified by each EU member individually in addition to the EU itself (see, for example, Chaisse 2012, 61; Leal-Arcas 2001, 512; Reinisch 2014, 122). This practice obviously had implications for the ambition in the negotiations of services trade liberalization in PTAs: Services chapters in EU PTAs tended to be rather cautious.

It was in the so-called Singapore Opinion in 2017 that the scope of EU-only competence in services trade in foreign trade policy was legally appraised for the first time (CJEU 2017). The Court held that only portfolio investments and the investor-state dispute settlement procedures in the EU-Singapore PTA did not fall within the scope of EU-only competence. All other policy areas—including substantial obligations in trade in services—were found to be within the scope of exclusive EU competence (see Conconi, Herghelegiu, and Puccio 2021, 4–6). This clarification with regard to EU competence in the negotiation of preferential trade liberalization in services is expected to contribute to more ambitious outcomes in services trade liberalization in EU PTAs, along with preferential services trade obligations which may incentivize also the full implementation of the free movement of services within the EU internal market.

1.3 Trade in Services Agreement

In 2016, the negotiations of the Trade in Services Agreement (TiSA)[4] came close to modernizing trade in services rules on the plurilateral level (limited to the signatories of the agreement) (see also, Kerneis 2017, 143–44). Modernizing the GATS rules not only corresponds with the initial plan to use the GATS as a steppingstone to further and deeper services trade liberalization, but it also became more urgent due to technological advancements, cheaper and more accessible transportation and internet which all rendered services substantially more "tradeable" and relevant than was the case when the initial GATS rules were negotiated. In consequence, critical regulatory aspects of services trade liberalization remain unaddressed by the GATS, along with rules for new types of services which did not exist at the time of the negotiation of the GATS. For instance, the supply of services through the internet—arguably the most common cross-border supply of services today—and all other, new internet-related services are not specifically addressed by the GATS. Regulatory issues regarding services which form an integral, inseparable part of manufacturing also remain unaddressed at the multilateral level: They may, at times, play a critical role in international goods trade even if supplied domestically (Antimiani and Cernat 2018; Peng 2020).

In particular, TiSA negotiations focused on rules regarding e-commerce, the cross-border supply of telecommunication services, and aspects of the temporary movement of service suppliers along with transparency and recognition of licenses and diplomas. They were indefinitely suspended in 2016. Therewith, PTAs remain the preferred forum for the advancement and modernization of applicable rules in services trade liberalization along with selected services-related plurilateral initiatives. PTAs are also a means to essentially move ahead with like-minded members of the plurilateral TiSA negotiations: The

more TiSA members agree with a certain regulatory structure in their PTAs, the more likely it is that this particular structure will ultimately also prevail at the plurilateral or even multilateral level. EU PTAs negotiated simultaneously or after the last round of TiSA negotiations are, therefore, closely in line with the EU TiSA offer, typically include new standards in selected topics of services trade liberalization and feature more ambitious services trade chapters than earlier EU PTAs (see Sieber-Gasser 2022, 60–61).

1.4 Plurilateral Initiatives in Services Trade

Of the services-related plurilateral initiatives aside from TiSA, negotiations of the Joint Initiative on Services Domestic Regulation were successfully concluded in December 2021 (WTO 2021). The initiative addresses overly burdensome bureaucracy in attaining the permission to trade in services. Therewith, it is inherently linked with the EC's 2017 services e-card proposal, alas not identical. The EU participated in negotiations, and all EU member states are among the sixty-seven original signatories. Members will inscribe the agreed disciplines in their existing GATS schedules of commitments. Therewith, the agreed new rules regarding procedures of attaining the permission to trade in services will apply vis-à-vis all GATS members and are not limited to the participants in the joint initiative. The agreed minimum standards in the applicable national rules for authorization to supply a services address among others the maximum number of competent authorities required to approach for authorization (one), a reasonable period of time for the submission of applications (all year, reasonably long time windows if applicable), applications in electronic format (acceptance of electronic documents), transparency during processing of applications (timeframe, information sharing, resubmission), authorization fees (not restrictive), as well as the frequency of examinations of qualifications (at reasonable intervals).[5]

With regard to the mutual recognition of certificates and diplomas, participants in the joint initiative agreed on a rule which is similar to the one of the Comprehensive Economic and Trade Agreement between the EU and Canada:[6] If professional bodies of members are mutually interested in establishing a dialogue on the recognition of professional qualifications, members should support them appropriately.[7] This approach is interesting because it moves the responsibility for the advancement of mutual recognition away from the public to the private sector. In consequence, the state intends to play a passive role in this regard, limiting itself to providing support to private sector initiatives. The fact that this rule has been agreed to by all participants in the joint initiative indicates to services industries that it is up to their professional bodies to become active if they wish to further facilitate cross-border trade in services.

In January 2022, negotiations of a plurilateral agreement on e-commerce resumed. The eighty-six WTO members participating in negotiations already agreed on a fair deal of common new rules for e-commerce: agreed text exists on spam, electronic signatures and authentication, e-contracts, online consumer protection, and open government data. Three main topics remain disputed: restricting the free flow of data, network neutrality, and customs duties on electronic transmissions (Geneva Trade Platform no date). As mentioned earlier, by addressing trade realities in a twenty-first–century global market in which internet constitutes a key factor in cross-border trade, these negotiations are closely linked with updating the applicable rules for trade in services beyond the GATS.

1.5 Preferential Trade Agreements in Services

Based on notifications to the WTO, there are currently twenty EU-PTAs in force which cover services trade liberalization (notified under GATS Article V).[8] The first extra-European trade agreement covering services trade liberalization was EU-Mexico (2000). Between 2000 and 2010, the EU ratified six PTAs in services,[9] and between 2011 and 2021, an additional fourteen PTAs in services trade.[10] Hence, the focus of EU foreign trade policy has not always been on PTAs in services but is rather a comparatively recent phenomenon.

In order to qualify for the most-favoured nation (MFN) exception in GATS Article V, PTAs in services need to fulfil substantial sectorial coverage (in terms of number of sectors covered, volume of services trade covered and without a priori exclusion of any of the modes of supply). Furthermore, PTAs in services in principle have to establish the absence or elimination of substantially all discrimination

within covered sectors. In order to comply with the quantitative requirements of GATS Article V, WTO members may exclude one–two services sectors from their PTAs in services as long as these sectors are not substantial in the sense of covered volume of services trade (GATS 1994, art. V; Sieber-Gasser 2016, 135-137). The EU typically excludes audiovisual services from the scope of its PTAs, as well as parts of cabotage services and of air transport services. The qualitative requirement of GATS Article V of "absence or elimination of substantially all discrimination" is generally considered to be fulfilled if market access obligations and national treatment obligations in the PTA go beyond the scope of the respective GATS commitments (Sieber-Gasser 2016, 137–153).

Not all EU PTAs in services clearly fulfil the requirements of GATS Article V,[11] they have, however, not been challenged to date with regard to their GATS compliance.[12] Hence, the GATS members are typically both legally and practically quite free to define the kind of rules and the levels of liberalization they wish to apply to their bilateral and preferential services trade. PTAs therewith constitute the ideal instrument to advance and perhaps even experiment with trade liberalization in services. Given the identified urgency of updated rules on services trade liberalization and the reach of EU services exports in the global market, ambitious services chapters in EU PTAs are likely to contribute to global standard setting in services.

2. Sample and Methodology

Of interest to the study of standardization in EU preferential services trade are particularly the EU PTAs since EU-Korea (2010), which entered into force in 2011. The six earlier EU PTAs in services will either be replaced with a more modern agreement (EU-Mexico),[13] are currently being renegotiated (EU-Chile) (see EC no date), entail an asymmetric services chapter (EU-CARIFORUM) (see EC 2008), or essentially consist of standstill obligations with a goal of progressive further liberalization of trade in services (EU-North Macedonia, EU-Albania, and EU-Montenegro). It is EU-Korea (2010) which entails substantial trade liberalization of services including the subsequently pursued particular EU-structure of services trade liberalization, which separates modes 1-2 from mode 3 and mode 4, each with a separate chapter.

Findings in this chapter are, thus, based on data from the services chapters and the chapters tightly linked with specific aspects of services in EU PTAs since 2010, along with the corresponding EU schedules of commitments. Data from EU PTAs is complemented with data from the EU GATS schedule of commitments, the EU TiSA offer of 2016, and the TiSA draft core text of 2016. The total sample of agreements consists of the following treaties, including Annexes:

1. GATS (1995)
2. EU-Korea (2010)
3. Colombia-EU-Peru (2012)
4. Central America-EU (2012)
5. EU-Moldova (2014)
6. EU-Georgia (2014)
7. EU-Ukraine (2014)
8. EU-Kosovo SAA (2015)
9. EU-Bosnia Herzegovina (2015)
10. EU-Kazakhstan (2015)
11. Canada-EU or CETA (2016)
12. TiSA (2016)
13. Armenia-EU (2017)
14. EU-Japan (2018)
15. EU-Singapore (2018)
16. EU-Vietnam (2019)
17. EU-UK (2020)

The main treaty texts along with the EU schedules of commitments were coded for scope of liberalization (scope of commitments in individual sectors compared with GATS, MFN, and NT obligations; procedural obligations for mutual recognition; excluded sectors/services) and for regulatory innovation

(regulatory structure of services trade liberalization, GATS-extra services, and services-related rules and obligations).

Of the fifteen coded EU PTAs, twelve cover substantial services trade liberalization,[14] while two agreements contain a ratchet-clause in services trade in combination with a declaration of intent to further liberalize trade in future negotiations (EU-Kosovo SAA (2015) and EU-Bosnia Herzegovina (2015)), and one agreement contains a ratchet-clause in services trade in combination with commitments regarding the temporary movement of natural persons, rules regarding domestic regulation and licensing and qualifications, and rules on international maritime transport (EU-Kazakhstan). Of particular interest with regard to the analysis of standardization are the twelve substantive EU PTAs along with the GATS and the TiSA.

Of these twelve substantive EU PTAs since 2010, five were concluded between the EU and industrialized, services strong economies,[15] and seven between the EU and developing to emerging markets, with less competitive service industries.[16] Interestingly, the scope of market access along with the regulatory structure of the services chapters does not substantially differ from one EU PTA to another, and appears to be rather independent from the level of competitiveness of the services industries in the respective PTA partner.[17] Instead, Figure 1.1 shows that EU PTAs in services list on average a clearly broader scope of commitments after CETA (2016) than before.[18] Furthermore, clearly on average all the EU PTAs in the sample are GATS-plus even if in some instances commitments in individual sectors are actually less in scope than GATS commitments:[19]

Figure 1.1: Depth of liberalization

Note: Individual schedules (business, communication, construction, distribution, education, energy, environment, financial, health, tourism, transport, e-commerce, mode 4) coded as follows: few or almost no reservations = 2, considerable reservations = 1, few or almost no commitments = 0. Maximum score (almost no restrictions in all sectors and mode 4) would be 26.

Hence, it would appear that the level and scope of commitments regarding market access and national treatment in the EU depends less on the respective negotiations/partner, and more on the EU services trade policy in general. The fact that more recent agreements entail more substantial commitments may indicate that the EU is binding the existing levels of openness in the respective negotiations rather than using the PTA to expand services market access and national treatment beyond current practice.[20] This renders the subsequent analysis of standardization in EU preferential services trade potentially intertwined with regulatory and practical developments in intra-EU services trade facilitation.

From a market access and national treatment perspective, intra-EU and extra-EU services trade is not always as clearly distinguishable as intra-EU and extra-EU goods trade. This is due to the fact that barriers to trade in services typically are of regulatory nature and not tariffs. As long as intra-EU services trade are not fully harmonized, facilitation of market access and national treatment for extra-EU services in the EU, therefore, continue to encounter regulatory limitations.

It goes beyond the scope of this study to analyze the extent to which preferential rules in extra-EU services trade deviate from the applicable rules of individual EU members in intra-EU services trade. What we can tell from the analysis of standardization in EU PTAs in services, however, is the type and extent of global rules for the liberalization pursued—and pushed through—by the EU.

2.1 Definitional Standardization

Definitional standardization in the context of services trade regulation deals, for instance, with the definition of (new) types of services, with the definition of the kind of economic activities which are considered "cross-border trade in services," or what constitutes a barrier to trade in services. While PTAs in general and at a global level closely follow the structure of the GATS and typically incorporate definitions as established in the GATS, there is room for regulatory development of definitional standardization particularly in 1. the definition of new services which did not exist at the time of the ratification of the GATS, 2. with regard to the distinction between services and services-related economic activities, and 3. with regard to "green services" (see Sieber-Gasser 2021). While the analysis finds EU definitional standardisation in the first two aspects, none could be found in the third aspect.

Prominently, EU PTAs address aspects of definition with regard to internet-related services trade. In separate chapters on computer services[21] and on postal and courier services,[22] elements of definitional standardization are entailed. The same can be said about the inclusion of e-commerce in the context of services trade liberalization. The separate chapter on computer services is particularly relevant with regard to definitional standardization: It is typically limited to the joint declaration that the parties to the agreement define "computer and related services" as services within the meaning of United Nations Code CPC 84.[23] A similar footnote can be found in the EU TiSA offer, hence, it appears that the inclusion of "computer and related services" in CPC 84 is in the process of becoming an international standard.

All of the coded substantive EU PTAs define cross-border trade in services as limited to GATS modes 1 (cross-border supply) and 2 (consumption abroad). The initial GATS mode 3 (commercial presence) is merged with liberalization in establishment, therewith covering not only commercial presence of service suppliers but also of suppliers of all other economic activities. The initial GATS mode 4 (presence of natural persons), on the other hand, is typically covered in a separate chapter on the temporary presence of natural persons for business purposes, therewith also extending the right of temporary stay of natural persons to non-service sectors.

This division of services trade regulation into "services-only" and "services-plus" chapters based on the respective mode of supply is not mirrored in the TiSA draft core text of 2016. It is unlikely that the EU would oppose incorporating its preferred regulatory structure and own definition of "cross-border trade in services" at the plurilateral level. However, given the accompanying extension of liberalization to the goods sector, incorporating the EU definition and regulatory structure does not currently fit within TiSA's mandate (which is limited in principle to services trade).

The limitation of the definition of "cross-border trade in services" to modes 1 and 2 benefits overall levels of liberalization in trade in general—since establishment and temporary movement are not limited to services industries—but ignores the fact that today most of global trade in services is supplied on the basis of mode 3 (establishment) (Rueda-Cantuche et al. 2016). Hence, the re-definition of "cross-border trade in services" as can be found in EU PTAs is not actually in line with de facto realities of trade in services, unless we no longer consider the supply of services through commercial presence to indeed constitute "trade in services."

Services trade statistics remain shaped by data limitations. Nevertheless, a more recent EU study on the share of trade in services along the four modes of supply suggests that by disregarding mode 3, mode 1 accounts for more than two thirds of international services trade in the EU (Rueda-Cantuche et al. 2016,

18). Temporary presence of natural persons (mode 4) typically accounts for the least amount of international services trade. Thus, by limiting the definition of "cross-border trade in services" to modes 1 and 2, the EU manages to focus rules of services trade liberalization on the core of international services trade, which is unrelated to goods trade.

This new definition of "cross-border trade in services" creates, however, regulatory inconsistencies with GATS: GATS rules continue to apply in principle to all modes of supply even if in an EU PTA supply of services through commercial presence is excluded from the general scope of the rules governing trade in services. Furthermore, excluding one or two modes of supply from the scope of a PTA would constitute in principle a violation of GATS Article V. The only reason why the redefinition of "cross-border services trade" by the EU does not constitute a serious problem is to be found in the fact that de facto, modes 3 and 4 are covered in the respective chapters on establishment/investment and on temporary presence of natural persons. Interestingly, EU PTAs are not explicitly addressing this potential conflict with GATS, while they address the relation to WTO agreements in other chapters.[24] There have, however, also not been any disputes in this regard to date and therewith the matter might qualify under legal cosmetics with limited practical implications.

It can, thus, be concluded, that the EU is establishing its own definitional standard of "cross-border services trade," and in combination with this, also its own definitional standard of establishment/investment and of temporary presence of natural persons for business purposes. Because all the assessed EU PTAs entail these definitions, the EU is clearly successful in pushing these definitions through. This is remarkable also since EU partners are otherwise not incorporating these definitions in their PTAs with other countries.[25]

2.2 Normative Standardization

Normative standardization in the context of international services trade deals, for instance, with the modernization and specification of the rules and obligations applicable to services trade liberalization. Normative standardization therewith creates additional obligations compared with GATS. TiSA negotiations essentially dealt with normative standardization in international services trade. Given that TiSA negotiations were well-advanced until they were suspended, a considerable share of normative standardization in EU PTAs essentially constitutes the implementation of the EU's TiSA offer. Particularly interesting are therefore new normative standards in EU PTAs which go beyond the scope of TiSA negotiations.

All agreements cover separate chapters in the main treaty text on financial services, e-commerce, telecommunication services, international maritime transport, temporary presence of natural persons, and on domestic regulation and licensing and qualification. In principle, this is where normative standardization is potentially found. The scope of these additional service-chapters, however, differs, particularly with respect to the scope of rules in procedures for mutual recognition and in e-commerce: Newer agreements tend to cover binding obligations in mutual recognition procedures and in e-commerce, while older agreements focus on outlining transparency rules and cooperation.

In the eight services trade-related fields covered in separate chapters in EU-PTAs, emerging new normative standards in services trade regulation can be found. While in telecommunication services, these new regulatory standards are already included in the 2016 TiSA, other emerging regulatory standards in services trade with the EU are comparatively new.

2.2.1 Normative Standardization in Computer Services

As already mentioned above, the separate chapters on computer services primarily serve the purpose of clarifying the definition of computer services. Therewith, services provided by electronic means remain covered by the respective EU PTA. But through the definition of computer services, EU PTAs also create normative standards in the sense that they therewith extend rules and obligations governing services trade along with the scope of GATS schedules of commitments. The understanding essentially ensures that services traded via network, including the internet (i.e., services which did not exist at the time of the negotiation of the GATS), do not fall outside of the scope of services trade liberalization.

In the most recent EU-UK (2020), the understanding on trade in computer and related services is part of the separate chapter on digital trade (see art. 212). However, the outcome effectively stays the same since the understanding lists the types of services which are considered "computer and related services" regardless of whether they are delivered via network. These listed services therewith essentially fall within the scope of the chapter on cross-border trade in services. Hence, why the understanding on computer and related services was moved to the chapter on digital trade is not immediately clear.

2.2.2 Normative Standardization in Postal and Courier Services

Chapters on postal and courier services—titles differ between agreements, sometimes the respective rules fall under only postal (Central America-EU (2012)) or only courier (Armenia-EU (2017)) services, and more recently under delivery services (EU-UK (2020)— have the main purpose of establishing basic rules regarding competition. They typically cover rules and obligations regarding licensing, anti-competitive practices, universal service, and independence of the regulatory body. These rules and obligations have become relevant due to the important role these services play today in the global market, along with the fact that postal and courier service suppliers are increasingly operating across borders and have therewith begun to compete with national suppliers of postal and courier services.

These normative standards in EU PTAs are typically in line with TiSA.[26] Thus, while they might not be considered just EU standards, the EU appears to be using its PTAs to implement the rules and obligations in postal and courier services which had already been agreed to in the TiSA negotiations. By implementing a plurilateral minimum standard, EU PTAs therewith contribute substantially to the global standard setting in new rules on competition in postal and courier services.

2.2.3 Normative Standardization in Telecommunication Services

These chapters basically establish the regulatory framework for electronic communication services. They address definitions, authorization, access and interconnection, scarce resources, universal service, confidentiality, and dispute settlement along with, more recently, submarine cable landing stations (e.g., EU-Singapore (2018)), roaming (EU-UK (2020) and EU-Japan (2018)), and open internet (EU-UK (2020)). Obviously, these rules and obligations in electronic communication services are to some extent new, given that they did not exist at the time of the negotiation of the GATS or were not as critical for the economy as a whole as they are today.

These chapters tend to be quite substantive and similar, therewith covering substantial normative standardization. Given that the 2016 TiSA covers a similar—and to some extent even identical—structure and scope compared with EU PTAs, it appears that also in this regard the EU is already implementing the plurilateral TiSA standard, therewith substantially contributing to global standard setting in new rules and obligations in electronic communication services.

The question remains open, to what extent the division between electronic telecommunication services and e-commerce remains durable. Possibly, both regulatory fields will eventually fall within the scope of "digital trade."

2.2.4 Normative Standardization in E-Commerce

Newer EU PTAs not only recognize the fact that electronic commerce exists, and that cooperation is required, but they also establish binding obligations so as not to impose customs duties on electronic transmissions (e.g., art. 8.58 in EU-Singapore (2018)). Three EU-PTAs establish liability obligations in the respective e-commerce chapters (Armenia-EU (2017), EU-Moldova (2014), and EU-Georgia (2014)), which, however, does not seem to have become a new normative standard for the EU just yet.

These are all new rules and obligations which are not covered by the GATS and have become increasingly critical for the maintenance of fair and safe trade relations at the international level. It is therefore somewhat surprising that plurilateral negotiations on e-commerce appear more advanced than the rules and obligations entailed in individual EU PTAs.[27] In addition, given that at the plurilateral level, the prohibition to impose customs duties on electronic transmissions constitutes one of the three main obstacles to the conclusion of the negotiations (developing countries do not agree with this prohibition), particularly the inclusion of this prohibition in a number of EU PTAs can be interpreted as an attempt by the EU to push their preferred standard also at the plurilateral level through.

2.2.5 Normative Standardization in Presence of Natural Persons

As mentioned earlier, GATS mode 4 has been substantially extended in EU PTAs to also cover, most notably, the presence of natural persons for business purposes unrelated with the provision of services. Furthermore, the scope of commitments regarding the presence of natural persons is broader in EU PTAs than in the 2016 TiSA and in the GATS with respect to categories of covered natural persons.[28] Therewith, the EU creates substantive new rules and obligations in the temporary movement of natural persons—for themselves but also for their partners, since these rules and obligations are entailed in a separate chapter in the main treaty text and therewith apply to both sides equally.

Due to the size of the EU internal market, commitments by the EU in temporary movement of natural persons are particularly attractive for all potential trading partners of the EU. Because not all markets are equally attractive for the temporary movement of natural persons, it is rather unlikely that the particular normative standards in EU PTAs will become the new global standard. On the contrary, typically PTAs remain comparatively silent on rules and obligations in the temporary movement of natural persons (Gootiiz et al. 2020, 135). It appears, hence, that the normative standardization in EU PTAs in the presence of natural persons corresponds with a template which the EU itself developed for the regulation of presence for business purposes of extra-EU citizens.

The EU approach of extending rules and obligations to the presence of natural persons for business purposes unrelated to trade in services contributes to simplification of the corresponding rules and therewith supports effective implementation: Distinguishing the temporary movement of natural persons for the supply of services from the supply of goods may contribute to unnecessarily burdensome bureaucracy in attaining the permission to enter a market. Hence, if practical experience with the EU approach to normative standardization in the movement of natural persons turns out to be positive, it could be of interest also to other markets and therewith has the potential to become a new international standard.

2.2.6 Normative Standardization in Mutual Recognition

Normative standardization in mutual recognition is tricky here: On the one hand, mutual recognition qualifies as quite the contrary of standardization given that it explicitly accepts different standards as equal and given that it applies only to a "club of a few privileged service suppliers." On the other hand, the rules applying to the procedures for mutual recognition can indeed fall within the scope of normative standardization in the sense that they establish new, binding obligations in EU PTAs which regulate when and how mutual recognition is to be granted.

As mentioned above, more recent EU PTAs not only cover rules regarding transparency and fairness in the recognition of licences and qualifications but binding obligations regarding the procedures for mutual recognition. These binding obligations go beyond the scope of TiSA and substantially beyond the scope of GATS and therewith introduce new rules and obligations for the EU and their partners. The currently applied procedure was introduced for the first time in CETA (2016) and basically builds on recommendations for mutual recognition of relevant professional bodies in both territories of the PTA. The parties to the EU PTAs are obliged to take necessary steps to negotiate a mutual recognition agreement if the recommendation is found to be consistent with the EU PTA (e.g., art. 8.16 EU-Singapore (2018)).[29]

In the meantime, these obligations have been incorporated to some extent in the Joint Initiative on Services Domestic Regulation and will therefore apply at a plurilateral level shortly. This creates opportunities for the private sector to engage in standardization across borders in order to facilitate services trade liberalization by reducing burdensome bureaucracy in attaining the permission to trade in and with a foreign market.

2.3 Absent Standardization

Given that the EU has been active for years in the creation of more sustainable trade relations, it is genuinely striking that none of the EU PTAs in services is considering the role of services trade in sustainable development. Services play a critical role in trade in environmental goods and in the promotion of sustainability and environmental protection in general: Specialized expert services are required for the construction, maintenance, and repair, for instance, for any kind of green energy plant

(solar, wind, geothermal, hydro, etc.). Access to high-quality services is therewith decisive for the longevity and effectiveness of environmental goods (Sieber-Gasser 2021).

Furthermore, schedules of commitments are not distinguishing between maintenance services of a gas-fired power plant and maintenance services of a wind power plant. In consequence both services have to be treated the same, while one—maintenance services for wind power plants—clearly has a positive impact on climate change mitigation, while the other has quite the contrary impact. The narrow scope of the WTO's sectoral classification list has been criticized for years for failing to reflect the current market characteristics of the environmental services sector (Sauvage and Timiliotis 2017). The Organisation for Economic Co-operation and Development (OECD)/Eurostat even specifically proposed in 1999 to include services provided "to measure, prevent, minimise or correct environmental damage to water, air, soil, as well as problems related to waste, noise and ecosystems" in the sectoral classification of "environmental services." Notably, the initiative for an Agreement on Climate Change, Trade and Sustainability (ACCTS) is incorporating the OECD/Eurostat proposal and expanding it to include also environmental goods (New Zealand no date). The EU is not currently participating in this initiative and appears also to not consider the initiative's objectives in its PTAs.[30]

Considering the scope of EU standardization in preferential services trade otherwise, expanding or redefining "environmental services" would constitute a perfect case for EU leadership in standardization. It is, hence, quite possible that the EU will eventually join the ACCTS effort or at least begins to incorporate its objectives in EU PTAs in services.

3. Conclusion

The liberalization of trade in services is a delicate matter: In addition to the obvious cultural and language barriers, it inevitably touches upon domestic law and national administrative processes, it is hampered by a serious lack of data and reliable, comprehensive statistics, and it renders globalization more visible through human interaction across borders than trade liberalization in goods (Rueda-Cantuche et al. 2016, 6). Not even within the EU internal market is services trade fully liberalized. It is arguably for these reasons that the EU treads comparatively cautiously in extra-EU preferential services trade liberalization: legislative differences between EU members in services trade have to be accounted for and the EU cannot overstep the scope of their exclusive competence in foreign trade policy, which still remains somewhat blurry when dealing with services trade liberalization.

In consequence, the EU appears to use plurilateral negotiations[31] and high-stakes PTAs in services (CETA (2016)) to internally agree on new standards in international trade in services, which are then implemented in and through PTAs. Clearly, the EU is prepared to go beyond minimum standards established in the GATS and also in plurilateral negotiations in its PTAs. Therewith, the EU contributes—despite its relative cautious approach—in particular to the normative advancement of standardization in international services trade in internet-related services, and in the comprehensive liberalization of presence of natural persons for business purposes and in establishment/investment.

It is striking that despite the comparatively low level of liberalization, the EU continues to remain the world leading market for services exports. This raises the question to what extent it is in the genuine interest of the EU to engage in trade liberalization in services? After all, the existing regulatory framework seems to work reasonably well for EU services industries so far. Unfortunately, due to a lack of data, we do not know the answer to this.

EU services industries will have to prepare for increasing competition from abroad with or without PTA: Given that emerging markets continue to catch-up in expertise and technology and are already absorbing a number of initially European services jobs, it is quite possible that European services industries will have to innovate more in the future in order to defend their position as the number one export market for services worldwide. Standardization will support this endeavour and therewith help protect the many services-related jobs and businesses in the EU.

Notes

1. As a single country, the US exports more services than EU members individually but less than the EU as a whole (see UNCTAD 2021).

2. For example, in 2021, the EU exported an estimated US$1.212 trillion in services, whereas the US is estimated to have exported US$0.771 trillion in services (see WTO Stats no date).

3. Of the 36 million jobs supported by EU exports, 61 percent are in services (see Kerneis 2019, 72).

4. TiSA had twenty-one negotiation rounds until November 17, 2016; negotiations between the twenty-three WTO members (including the EU and Australia) have been on hold since. For more information, see https://ec.europa.eu/trade/policy/in-focus/tisa/.

5. Section II – Disciplines on Services Domestic Regulation, Annex 1, Declaration on the Conclusion of Negotiations on Services Domestic Regulation, 2 December 2021, WT/L/1129. Section III then entails specific rules regarding financial services domestic regulation.

6. Chapter Eleven – Mutual Recognition of Professional Qualifications, CETA.

7. 11. Recognition, Section II – Disciplines on Services Domestic Regulation, Annex 1, Declaration on the Conclusion of Negotiations on Services Domestic Regulation, 2 December 2021, WT/L/1129.

8. Treaty on European Union and European Economic Area Treaty not included (WTO no date).

9. EU-Mexico (2000), EU-North Macedonia (2004), EU-Chile (2005), EU-CARIFORUM (2008), EU-Albania (2009), and EU-Montenegro (2010).

10. In the same period of time (2011–21), the EU also ratified five PTAs covering only goods trade: EU-Eastern and Southern Africa States (2012), EU-Cameroon (2014), EU-Côte d'Ivoire (2016), EU-Southern African Development Community (2016), and EU-Ghana (2016).

11. Some might even be considered GATS-minus (failing the qualitative and quantitative requirements). See, for example, Adlung and Miroudot (2012).

12. To date, the only WTO dispute dealing explicitly with GATS Article V is Canada – Autos (see WTO 2000, para.10.270). See also Sieber-Gasser (2016, 150–53).

13. An Agreement in Principle was reached in 2018 and is awaiting ratification (see European Commission 2018).

14. EU-Korea (2010), Colombia-EU-Peru (2012), Central America-Eu (2012), EU-Moldova (2014), EU-Georgia (2014), EU-Ukraine (2014), CETA (2016), TiSA (2016), Armenia-EU (2017), EU-Japan (2018), EU-Singapore (2018), EU-Vietnam (2019), and EU-UK (2020).

15. EU-Korea (2010), CETA (2016), EU-Japan (2018), EU-Singapore (2018), and EU-UK (2020).

16. Colombia-EU-Peru (2012), Central America-EU (2012), EU-Moldova (2014), EU-Georgia (2014), EU-Ukraine (2014), Armenia-EU (2017), and EU-Vietnam (2019).

17. For instance, EU-Vietnam (2019) and EU-UK (2020) score equally well, while Armenia-EU (2017) entails overall more substantial commitments than EU-Korea (2010).

18. This is not only because of but is also due to the fact that, in all EU PTAs, commitments in mode 4 (temporary movement of natural persons) are broader than in GATS (GATS-plus) due to the fact that eight of the twelve EU PTAs entail commitments in e-commerce (GATS-extra).

19. For instance, commitments in tourism are less in scope than in GATS (GATS-minus) in EU-Moldova (2014), EU-Georgia (2014), and EU-Ukraine (2014).

20. Given that CETA (2016) is clearly more substantial than all the previous EU PTAs in services, subsequent EU PTAs may have benefited from the levels of openness established through CETA (2016) negotiations (binding of existing levels post-CETA (2016)).

21. No separate chapter on computer services in CETA (2016) or EU-Japan (2018).

22. No separate chapter on postal and courier services in CETA (2016).

23. See, for example, art. 108 of EU-Ukraine (2014).

24. For instance, Chapter 12, "Subsidies," in EU-Japan (2018) explicitly clarifies in art. 12.4 that "nothing in this Chapter shall affect the rights and obligations of either Party under […] Article XV of GATS." No comparable provision is to be found in the chapters covering (among others) cross-border services trade and establishment or investment liberalization.

25. For example, Japan-Australia (2014) covers all four modes of supply in its services chapter (art. 9.2(n)); the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (2016) covers modes 1, 2, and 4 in its services chapter (art. 10.1), which corresponds with the US template in this regard (see, for example, art. 12.13 US-Korea (2012)). Globally, the majority of PTAs in services follows the US template (see Gootiiz et al. 2020, 125).

26. See Wikileaks (2015) for draft TiSA Annex on Competitive Delivery Services.

27. See previously under 1.4.

28. EU PTAs cover the categories of independent professionals, managers or executives, specialists, and trainee employees. See, for example, art. 8.13 EU-Vietnam (2019), and art. 99 and art. 102 EU-Ukraine (2014).

29. See also here under 1.4.

30. Current members are New Zealand, Costa Rica, Fiji, Iceland, Norway and Switzerland.

31. See TiSA, Joint Initiative on Services Domestic Regulation, plurilateral agreement on e-commerce.

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