

The Research on the GATS-Minus Characteristic under the Framework of the Regional Service Agreements

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Abstract—Recently the regional service trade liberalization is expanding rapidly. In the wake of the ‘GATS+’ trend showing in the regional trade agreements (RTAs), GATS-Minus (GATS-) characteristics has been found obviously in part of these RTAs. This paper showed that GATS-minus commitments is concentrated to some specific service sectors (such as finance, communication, business and transportation services) and supply modes (mainly mode 3 and mode 4). The typical GATS minus commitments are as follows: (1) imposing more restriction measures on the original market access and national treatment commitments; (2) seeking more exemption and exclusion on the subsidy related obligations ; (3) reducing the sector coverage of the GATS commitment.

Key Words-RTAs, trade in services, GATS-

I. INTRODUCTION

Since the mid-1990s, the number of the notifications of the regional trade agreements (RTAs) that made under Article V: 5 of the GATT/WTO has been growing fast. As to the regional service trade liberalization, most scholars focus on the further services liberalization commitments in regional services agreements than that of GATS, which can be called GATS-plus (‘GATS+’) commitment. In fact, in the wake of ‘GATS+’ tendency, some regional service trade agreements present obvious ‘GATS-’ characteristics, that is, the service liberalization levels or the transparency and credibility of the RTAs are less than that of GATS. Many RTAs even those involving the largest economies such as United States, European Union, Japan are also consist of GATS-minus commitments

Up to now, the relative studies on ‘Negative Preference’ or GATS-minus commitments in RTAs are quite limited. There seem to be only four representative articles discussing this phenomenon in details. Mario Marconini (2006) discusses the ‘Negative Preference’ aroused on definition and coverage, temporary entry of natural persons, and exclusion of air transport services, by comparison the Latin American countries’ GATS commitments with that in these RTAs concluded with US, EU and Japan. Miroudot Sauvage, Sudreau (2010) examines services schedules of commitments in 56 regional trade agreements, reviews such agreements and their respective shares of GATS-plus, GATS-equivalent, and GATS-minus commitments in view of Market Access, National Treatment, Rules of Origin, and

most-favored-nation treatment (MFN) provision, and argues that GATS-minus commitments account for a considerable proportion. Rudolf Adlung and Peter Morrison (2010) depict the existence and potential motivations of GATS-minus commitments with the analysis on three RTA-cases. Adlung and Miroudot (2012) analyze the nature and distribution of ‘minus commitments’ based on 80,000 commitments in 66 agreements, and discusses potential remedies from a WTO perspective.

Regarding to the nature of GATS-minus commitments in regional liberalization, this paper finds that there are very few studies on this phenomenon, and obvious deficiencies in exiting studies – not comprehensive in describing and summarizing these features, and only involving developed economies. In fact, due to the different status and interests in the world for developing and developed economies in regional service trade negotiations, minus commitments will presents differences in regional trade agreements, which could be divided into North - North agreements, North - South agreements and South - South agreements. However, regional service trade liberalization process is growing rapidly; developing economies gradually become the active participants and drivers in this regional liberalization proceeding. Without taking the service trade arrangements concluded newly into account in the study sample, any study will be unavoidably biased in conclusion. This paper tries to make improvements in the following aspects: expanding the research sample, including the newly concluded and implemented regional trade arrangements, especially North - South agreements and South - South agreements involved by large numbers of developing economies in order to obtain more comprehensive and deeper analysis on minus commitment features.

II. THE DISTRIBUTION OF THE GATS-MINUS COMMITMENTS IN RTAS

This paper argues that the GATS-minus commitments concentrates to some specific service sectors and supply modes, as following.

A. GATS-minus Commitment is Concentrated to some Traditional Service Sectors such as Financial, Communication, Business and Transportation.

It's found that most of GATS-minus commitments (90 percent), focus on finance, communication, business and transportation services with verification of the regional trade agreement texture. This phenomenon may be explained largely by that finance, communication, business and transportation services are the more important traditional service sectors. After the Second World War, with the promotion of the third industrial revolution, the finance, telecommunications, transportation and intellectual property protection have gone through rapid development, and trade in services has speeded up to these areas. Moreover, these sectors' trade volume collects more and more shares from world trade. For example, according to statistics on international trade in services of world trade organization (WTO), in 2000-2010 only transportation service in world service trade export accounts for more than 20 percent. Business service within the past 10 years has kept sustainable and rapid growth, and its annual growth rate reached 12%, much higher than the world average growth rate 9%¹. Contrast to these emerging service sectors, such as health-related & social service, recreational, cultural, sport service and environmental services, the development of traditional service trade sector is considerably mature, and competitiveness is relatively strong. So during the past 15 years with rapid development in the service trade liberalization, service openness has focused on traditional areas, i.e. finance, communications, business and transportation services. In this process, due to various reasons, economies, particularly developing economies have blown hot and cold on the service sector openness in multilateral and regional trade. In a nutshell, it is not surprising for GATS-minus commitments gathering into traditional service sectors.

B. GATS-minus Commitment is Concentrated to Commercial Presence (Mode 3) and Movement of Natural Persons (Mode 4).

From the modal patterns' perspective, mode 3 (commercial presence) and mode 4 (presence of natural persons) have more GATS-minus commitments and more limitations than mode 1 (cross-border trade) and mode 2 (consumption abroad). These two modal patterns respectively account for one third share of GATS-minus commitments. This paper attempts to make the following interpretation. First, compared to mode 1 and 2, mode 3 and 4 are possibly more economic and political sensitivity referring to large-scale inflows of foreign capital and labor. Under the specific historical conditions, some members may have made commitments beyond their economic growth

level within the GATS framework on these two modal patterns. Along with the trade situation changes and state policy guidance, these members will want to slow down the opening pace. Particularly, as to security of excessive foreign investment and foreign labor inflows, some economies, especially developing economies will choose relatively conservative GATS commitments in regional negotiations. Second, existing studies on service modes of supply suggest that there is a complementary relationship between service modal patterns, especially between mode 3 and 4². That is, the liberalization of mode 3 and 4 will promote and complement each other. Therefore GATS-minus commitments lie in both mode 3 and 4 in an economy's regional commitments, because once an economy makes negative commitments in one modal pattern, it will induce the similar minus commitments in another pattern. That's why GATS-minus commitments simultaneously appear in mode 3 and 4.

III. TYPICAL CHARACTERISTIC OF THE GATS-MINUS COMMITMENT IN RTAS

A. Additional Limitations and More Restrictive Measures on the Original Market Access and National Treatment Obligation

Under the GATS system, each member make commitments to selectively and restrictively grant national treatment and market access to other parties' services and service suppliers through Schedules of Specific Commitments, which is the consequence of national conflicts and compromise. Except for the listed limitations under GATS Schedules, member does not require to make additional National Treatment limitation on other parties' offered service and service suppliers. In general, we break down limitations to market access and national treatment in GATS into 9 categories (Miroudot, auvage and Sudreau, 2010) .

One typical nature of GATS-minus commitments is that members make more restrictive measures on market access and national treatment. Regarding these categories, the finding is that restrictive measures maintained by countries in their RTAs are more than that in their GATS. However, there is much difference of the preference for restrictive measures application described in members' regional arrangements. To be specific, in terms of market access, members prefer to reduce obligations in region by restrictions on foreign ownership or on the type of legal entity and quantitative restrictions on the service or service suppliers (not including Mode 4) than restrictions to the movement of people. For instance, Thailand as one party of Japan-Thailand Economic Partnership Agreement lowers foreign equity ceilings for certain telecommunication

¹ Lu Yan, Development Structure and Tendency of International Service Trade, International Economic Cooperation, No. 8, 2011.

² Meng Yinghua, Commercial Presence VS Presence of Natural Persons in Service Trade: Evidence of Complementary, Finance and Trade Research, No. 6, 2009.

services from 40 percent (in GATS) to 25 percent. Given national treatment, restrictions to the movement of people are less in region, but nationality and residency requirements for boards of directors and managers, discriminatory licensing requirements, restrictions on ownership of property or land take on minus commitment in similar level.

B. Pursuit of Exclusion and Exception on the Service Subsidy related Obligations

Subsidy is effective tool for trade protection. According to the statistics about subsidy clauses, a total of 36 agreements list application restriction on subsidies from November 2003 to March 2009³. In regional service trade arrangements, GATS- commitments' features on the subsidy rules are quite outstanding. We agree that, the following two aspects can give a good picture of negative preference on subsidies. First, most-favored-nation treatment (MFN) exemption related to subsidies. One is setting more application conditions of MFN clause, namely the so-called 'conditional most-favored-nation treatment' with providing the 'corresponding compensation' by the other contracting party to enjoy this preferential benefits or privileges. Another is exclusion of third-party MFN clauses, in fact of 2/3 RTAs without this clauses. (Rudolf Adlung, ébastien Miroudot,2012) . Second, more restrictive measures on National treatment related to subsidies. According to the analysis, 80% RTAs grant 'discriminatory measures with regard to subsidies or taxes' under national treatment clause. It is found that developing economies prefer possibly to make minus commitment on national treatment referring to service subsidies. For example, concerning the India-Singapore Comprehensive Economic Cooperation Agreement (CECA), India makes commitments of non-extension of subsidies to foreign suppliers for national treatment under mode 3, which are not listed in India's GATS schedule. Meanwhile, as to the China-ASEAN Agreement on Trade in Services (Article 19), subsidies and grants under national-treatment obligations in China's schedule are completely exempt from virtually all disciplines, showing that the exemption for subsidies from substantive disciplines applies no matter of domestic services, service consumers or service suppliers. These seriously reduce the levels of service openness and liberalization in RTAs is less than its GATS schedule.

What factors result in the exclusion and exception on subsidies increasing in regional level? First, loosen multilateral discipline on international trade subsidies, and no more strict restriction on the increasing subsidy exclusion. Second, as an effective tool to accelerate service trade export and service competitiveness, subsidy covers

³ Rudolf Adlung and Peter Morrison (2010) , Less than the GATS: 'Negative Preferences' in Regional Services Agreements, Journal of International Economic Law.

substantial service sectors and has been an essential way for members to develop their service trade in world. Third, misunderstanding of the GATS provisions and over-ambitious commitments prescribed in GATS schedule, make these members look for low service openness level in regional negotiations in order to reduce transaction costs and trade conflict.

C. Excessive Omission of Sub-Sectors and Mode Coverage of the GATS commitment

Coverage narrowed under modes of supply and service sectors in region, is another typical nature.

Figure 1 provides an overview of omission of sub-sectors and modal patterns, which displays different degree among these 11 sectors. 78 percent of 'minus commitments' on financial services is in the way of omission (narrowed coverage), followed by transport services, business services, tourism & travel-related services, distribution services, communication services (at least 40 percent). The percentage of minus commitment by omission on health, construction engineering, and education services is very low, at 12%, 18% and 21% respectively. Concerning modes of supply, omitted commitments in mode 2 and mode 3 are at a higher rate, 68% and 69%. In spite of relatively limited minus-commitments on mode 2, there are 3/5 of them showed in the way of omission. This can be explained that mode 2 (consumption abroad) is a mode with relatively simple form, reflecting the direct interaction between service provider and consumer, thus it's normal to definitely list 'unbound' in some sectors(narrowed sectoral coverage) to realize trade protection, rather than by additional limitations. Most sectors such as transportation, post and telecommunication, financial and social services, are speculated by mode 3, as a result, omitted commitment from these sectors will be reflected on relevant characteristics of mode 3.

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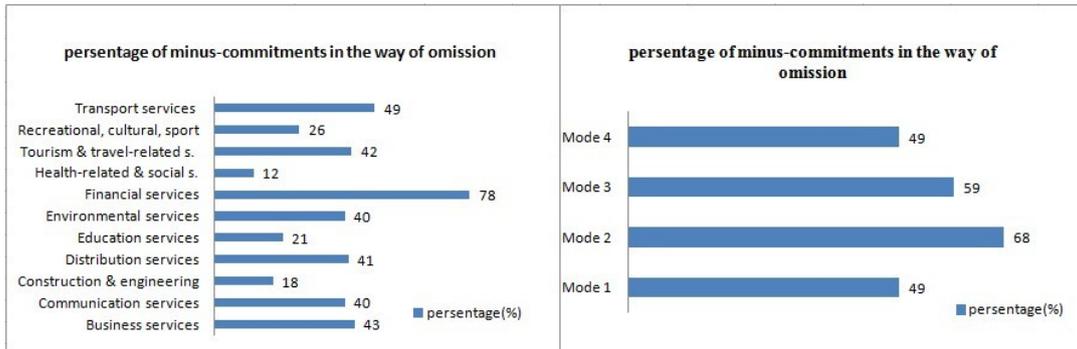


Figure 1. Omission of sub-sectors and modal patterns
 Data resources: Rudolf Adlung, Sébastien Miroudot (2012)