

Services rules in RTA :
how diverse and how creative
as compared to GATS ?

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Services rules in RTA

- No “babel tower effect”
- No conceptual breakthroughs
- “Mini-GATS minuses”
- Real but relatively marginal improvements as compared to the GATS framework
- A non- exclusionary liberalization
- But a weak liberalization

1.No babel tower effect

- Two main families (GATS and NAFTA)+ some U.L.O (Un-identified Liberalizing Objects)
- GATS : positive listing, 4 modes, no standstill, no ratchet
- NAFTA: negative listing standstill and ratchet for “annex 1” measures, cross border versus investment (with B.I.T-like disciplines)
- “conversion” between the two families still possible
- TISA: An odd upcoming marriage between the two families (market access positive listing, national treatment negative listing)

2.No conceptual breakthroughs

The unfinished Uruguay Round services agenda remains unfinished :

- Subsidies : a step back in NAFTA-like, nothing in GATS-like
- Government procurement :a small step back in NAFTA-like, nothing in GATS-like
- Safeguards :very few and very embryonic mechanisms (essentially consultations) even among the “friends of safeguards”
- Domestic regulation : Purely procedural general provision not even going as far the GATS accountancy disciplines
- Recognition: essentially cooperation provisions

3.”Mini-GATS –minuses”

- subsidies, Government procurement
- financial services, maritime cabotage, selling and marketing of air transport services
- Public services exception
- Numerous GATS-minus too in commitments, most of them probably unintended, and whose opposability in GATS terms remains to be tested

4. Real but marginal improvements

- Larger coverage of air transport services by some ag(specialty air services and investment aspects of air transport)
- 1993GATT-FTA water +1993-2014 accumulated water(autonomous lib.) “pumped” via standstill and ratchet for annex 1 measures in NAFTA-like
- Domestic regulation disciplines often extended to sectors without commitments
- Apparent progresses on recognition of qualifications issues
- Procedural progresses on mode 4

5. A non-exclusionary liberalization

- In most instances commitments seem to be based on a *status quo* /standstill/applied regime basis
- And this regime is generally applied *erga omnes*
- With a dynamic effect (ratchet)
- So the difference of treatment between parties and non-parties is not on the regime applied but on the existence of bindings whose strength is anyhow disputable (no dispute settlement or weak dispute settlement, virtually no implementation follow up)

6. A weak liberalization

- Deliberately weak MFN clauses preventing snowball effect
- No notifications mechanisms to operationalize standstill and ratchet when they exist
- Question mark on the implementability of a multiplicity of regimes by administrations beyond the border
- In many instances no or weak or non-invoked dispute settlement provisions