Preferential Services Liberalization offers the first, comprehensive analysis of the conditions that the WTO sets for preferential trade agreements (PTAs) in the area of services. Johanna Jacobsson provides an in-depth analysis of the relevant GATS rules, puts forward a practical method to analyze services PTAs, and applies the method to services agreements concluded by the EU. The result is a detailed examination of the legal criteria for services PTAs and methods to study them, combined with a better understanding of the level of liberalization reached by the EU and its member states. This book does go beyond the EU in analyzing the implications that multi-level governance has for international services liberalization. It proposes a new approach to study services commitments of any federal state and argues that lower levels of government should receive more attention in international negotiations over services trade.

Johanna Jacobsson is Assistant Professor at IE University (Madrid, Spain). Her main fields of research are international trade law and the EU’s internal market law and external trade relations. Professor Jacobsson holds a Ph.D. from European University Institute, Florence and an LL.B., LL.M. and B.A. from University of Helsinki.
As the processes of regionalisation and globalization have intensified, there have been accompanying increases in the regulations of international trade and economic law at the levels of international, regional and national laws.

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PREFERENTIAL SERVICES LIBERALIZATION

The Case of the European Union and Federal States

JOHANNA JACOBSSON

IE University, Madrid, Spain

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FOREWORD

Johanna Jacobsson has accomplished no small feat. She has managed to bring together, under one roof, a very comprehensive analysis of one of the thorniest issues not only in trade in services, but in trade in general: how should we understand preferential agreements within a context where protection (an elusive notion in and of itself) is afforded through non-tariff barriers only (i.e. measures aiming, in principle, to address market failures, and hence presumably non-discriminatory)?

To do this, she has laid down two axes: practice, illustrative practice, since an exhaustive analysis of all preferential schemes would require considerably more space; and a high-ebb benchmark, federalism, a process as far-reaching as one can imagine. By doing that, she attracts the attention of the reader to the span, the realistic span that one needs to keep as backdrop when approaching the question of preferential integration in the realm of services trade.

Her methodology is invaluable for various reasons, and it is this aspect of her work I want to insist upon, since, in my view, this is her main doctrinal contribution. For one, terms that look like empty shells when they appear in Article V of GATS, suddenly come to life. ‘Substantial sectoral coverage’, ‘prohibition of discriminatory measures’ are hardly self-interpreting terms. Johanna walks us through a very representative sample of preferential agreements, and offers an understanding of the terms in the real world. Second, thanks to this work, we are in a better position to evaluate not simply the legal consistency of various agreements with the overarching statutory provisions, but further, to appreciate the depth of preferential integration, and the wedge that emerges between preferential and MFN integration.

And, even more importantly, we have a better picture about how much we can achieve at the MFN level. In that, her work sensitized me at least, to the limits of MFN when we discuss non-tariff barriers. It is one thing to exchange tariff concessions at the six-digit level, a level uninformed by regulatory concerns. It is a different game to discuss statutory
requirements for lawful supply of service in any given market. Since a very substantial number of services are either experience or credence goods, and hence, the need to regulate is present, integration will ultimately be the function of regulatory rapprochement. This is easier done across like-minded players, than otherwise.

And here we touch on the most sensitive integration issues associated with the current shape and functioning of the WTO. Can the WTO continue to operate observing the ‘single undertaking’ approach? Is it time to formally endorse variable geometry?

Going through the pages of this book, this thought emerged first as a nudge, and then was reincarnated as necessity. Johanna’s work offers a precious platform to entertain this, in my view the most important, issue regarding not simply trade integration, but the (continued) relevance of the WTO. Anyone thinking about, or working on a (the) WTO 2.0 will have a lot to learn when going through her analysis in this respect.

Johanna thus, by addressing her research question in the manner that she has decided to address it, is offering not simply a very comprehensive discussion of preferential integration in the realm of trade in services. She is offering much more, much much more. Her work will be discussed by all those entrusted with the shaping of world trade relations, and the appropriate institutional vehicle to do that. At times of crisis of confidence in the machinery promoting trade integration, this is no small feat, by any reasonable benchmark.

Petros C. Mavroidis  
Edwin B. Parker Professor of Law  
Columbia Law School, New York City, New York
ACKNOWLEDGEMENTS

This book is to a large extent based on a PhD project carried out at the European University Institute in Florence and defended in December 2016. The resulting thesis focused on the criteria that the WTO's General Agreements on Trade in Services (GATS) sets for preferential services agreements. It also included the methodology that is presented in this book to analyze services agreements in light of the GATS criteria and especially in light of the EU's practice. The present book, however, goes further and sets this discussion in a wider context – that of federalism. The relevance of federalism has in the last couple of years become evident in international trade negotiations. Sub-central levels of government were in a key role both in the TTIP negotiations with the United States and in the CETA negotiations with Canada. In Europe, the Wallonian saga in the CETA context showed the impact that some EU Member State's own regions can have for the EU's trade negotiation capacity. As the power of regions and even cities is becoming more recognized, it can be predicted that the role of sub-central levels of government is set to grow further in international trade negotiations.

The completion of this book would not have been possible without the support and participation of several people and institutions. I wholeheartedly thank the European University Institute and the Academy of Finland for making it possible for me to pursue doctoral studies in the field of international trade law. It is hard to imagine a more inspiring place to work and study than the EUI. I also thank Judge Allan Rosas from the Court of Justice of the European Union for offering me the chance to work in his cabinet for a year during my PhD. I wholeheartedly thank also the Finnish Institute of International Affairs for welcoming me as a visiting researcher during a year of my research and providing me with a wonderful working environment. The book was finalized at IE University, Madrid, where I have the pleasure to work as Assistant Professor in a truly international and innovative environment.
Discussions with many academics and practitioners have helped me to understand what services trade is really about – even if I still have much to learn. I would particularly like to mention and thank Prof. Bernard Hoekman, Hamid Mamdouh, Martin Roy, Antonia Carzaniga, Juan Marchetti, Rolf Adlung, Pierre Sauvé, Prof. Markus Krajewski, Amelia Porges and Prof. Jukka Snell. I also thank Prof. Robert Wolfe, Judge Allan Rosas and Prof. Bernard Hoekman for their very helpful comments as members of jury at my doctoral defence.

Finally, I would like to sincerely thank my PhD supervisor, Professor Petros C. Mavroidis, who not only helped me to enter and understand the world of trade law but also opened my eyes to the possibilities of approaching legal research from less traditional angles. His support and encouragement was crucial also for the conclusion of the present book. My sincere thanks also to the anonymous reviewers of the book proposal. Their comments encouraged me to go deeper in the issue of federalism and the implications that multi-level governance has for international services liberalization.

The balancing act between research and ‘normal life’ is not always easy to handle. For helping me to keep my act together I thank my dear friends and family. I would not have completed this book without your support. That is even more so with my parents, Leena and Jarmo. I have relied, and I keep relying, on your support, love and wisdom. This book is dedicated to you. Y a ti Rafa, gracias por todo cariño.
ABBREVIATIONS

AA Association Agreement
AB Appellate Body (WTO)
BV Business visitor
CCP Common Commercial Policy (EU)
CETA Comprehensive Economic and Trade Agreement (EU-Canada)
CJEU Court of Justice of the European Union
CRTA Committee on Regional Trade Agreements
CSS Contractual service supplier
CU Customs union
DCFTA Deep and Comprehensive Free Trade Area
EC European Communities
EEA European Economic Area
EEC European Economic Community
EFTA European Free Trade Association
ENT Economic Needs Test
EPA Economic Partnership Agreement
EU European Union
FTA Free trade agreement
GATS General Agreement on Trade in Services
GATT General Agreement on Tariffs and Trade
GDP Gross domestic product
GSP Generalized System of Preferences
EIA Economic Integration Agreement
ICT Intra-company transferee
IP Independent professional
JEEPA Japan–European Union Economic Partnership Agreement
ICJ International Court of Justice
ILC International Law Commission
MA Market access
MFN Most-favoured nation principle
NAFTA North American Free Trade Agreement
NT National treatment
PTA Preferential trade agreement
## List of Abbreviations

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<tr>
<td>RTA</td>
<td>Regional trade agreement</td>
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<td>SC</td>
<td>Sectoral coverage</td>
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<td>TCN</td>
<td>Third-country national</td>
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<tr>
<td>TEU</td>
<td>Treaty on European Union</td>
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<tr>
<td>TFEU</td>
<td>Treaty on the Functioning of the European Union</td>
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<tr>
<td>TiSA</td>
<td>Trade in Services Agreement</td>
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<tr>
<td>TRIPS</td>
<td>Agreement on Trade-Related Aspects of Intellectual Property Rights</td>
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<tr>
<td>USA</td>
<td>United States of America</td>
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<tr>
<td>USTR</td>
<td>United States Trade Representative</td>
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<td>USCMA</td>
<td>United States Mexico Canada Agreement</td>
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<tr>
<td>WTO</td>
<td>World Trade Organization</td>
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GATT/World Trade Organization

Agreement on Technical Barriers to Trade (TBT Agreement II), April 15, 1994, 1868 U.N.T.S. 120, LT/UR/A-1A/10 (1994)


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Preferential Treatment to Services and Services Suppliers of Least-Developed Countries, Ministerial Conference Decision of 17 December 2011, WT/L/847, 19 December 2011


European Union

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CITED TREATIES AND EU LEGISLATION


Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part, Official Journal of the European Union L 289 of 30 October 2008

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Agreement Establishing an Association between Central America, on the one hand, and the European Community and its Member States, on the other, Official Journal of the European Union L 346 of 15 December 2012

Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, Official Journal of the European Union L 261 of 30 August 2014

Primary Legislation


Secondary Legislation


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CITED CASES

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LaGrand (Germany v. United States of America), 1999 I.C.J. 9 (Order of Mar. 3) and Judgment, I.C.J. Reports 2001, p. 466

GATT/WTO Dispute Settlement Body
European Community – Tariff Treatment on Imports of Citrus Products from Certain Countries in the Mediterranean Region, L/5776, 7 February 1985, GATT Panel Report, unadopted

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The Court of Justice of the European Union


Joined cases C-49/98, C-50/98, C-52/98 to C-54/98 and C-68/98 to C-71/98, Finalarte Sociedade de Construção Civil Ldª (C-49/98), Portugaia Construções Ldª (C-70/98) and Engil Sociedade de Construção Civil SA (C-71/98) v Urlaubs- und Lohnausgleichskasse der Bauwirtschaft and Urlaubs- und Lohnausgleichskasse der Bauwirtschaft v. Amilcar Oliveira Rocha (C-50/98), Tudor Stone Ltd (C-52/98), Tecnamb-Tecnologia do Ambiente Ldª (C-53/98), Turirprata Construções Civil Ldª (C-54/98), Duarte dos Santos Sousa (C-68/98) and Santos & Kewitz Construções Ldª (C-69/98) [2001] ECR I-7831

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