

澳洲服務業自由化： 單邊主義必須取代優惠主義

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中文摘要

要改善澳洲經濟效率與表現就必須強化服務業的生產力。而服務業貿易自由化則是此項要務的關鍵。因此，值得吾人評估澳洲所推動的與亞洲伙伴洽簽包括服務業在內的優惠貿易協定（**Preferential Trade Agreements**, 簡稱 **PTAs**）是否有助於澳洲的自由化。這些問題在 2010 年政府委辦的雙邊與區域貿易協定的獨立政策研究上由澳洲生產力委員會（**Australian Productivity Commission**）提出討論。這項具指標性的研究提供給各界有對澳洲 **PTA** 經驗反應的機會。吉拉德（**Gillard**）政府因而在 2011 年 4 月發表貿易政策聲明，這意味著政府將重振貿易政策，回歸到 1980 年代與 1990 年代經改時期的單邊經濟政策以有助扭轉過去超過十年的澳洲生產力持續下滑的問題。

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本文主旨即在就此問題深入剖析，第二節將檢視服務業貿易自由化的經濟學，包括何以單邊主義（**unilateralism**）最重要；第三節剖析澳洲 **PTAs** 及其在澳洲貿易政策中所扮演的日益重要的角色；第四節討論經由 **PTAs** 來進行服務業貿易自由化，含括其固有的局限性；第五節探討澳洲將 **PTAs** 應用於服務業所獲的經驗；第六節強調透明度（**transparency**）與單邊主義的結合必須在推動有意義的與永續性的（**sustainable**）與貿易相關改革中扮演關鍵角色，尤其是服務業，其障礙往往隱藏邊界之後；第七節將審視澳洲貿易政策的最近發展以及這些發展對 **PTAs** 的服務業協定暨自由化所可能帶來的影響；最後則是結語。

Liberalising Australian Services: Unilateralism needed over Preferentialism

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1. Introduction

Enhancing services productivity is needed to improve the Australian economy's efficiency and performance. Further services trade liberalization is essential for this. It is thus worth assessing if Australia's acceleration into Preferential Trade Agreements (PTAs), mainly with Asian

¹ The authors would like to gratefully acknowledge useful comments from Rudolf Adlung and Dale Honeck from the WTO Secretariat (Services Division), Bernard Hoekman and Sebastian Saez from the World Bank (International Trade Department), and Andrew McCredie, Executive Director, Australian Services Roundtable (ASR).

partners and all of which have included services, have contributed to liberalization in Australia.

These issues were addressed by the Australian Productivity Commission (PC) in the government-commissioned independent public study on Bilateral and Regional Trade Agreements (PC 2010). This watershed Study offered a major opportunity to reflect on Australia's experience with PTAs. The Study led to the Government's April 2011 Trade Policy Statement, which signalled reinvigorating and returning Australian trade policy to the unilateral economic policy roots of the reform period of the 1980s and 1990s to help reverse the slide in Australian productivity growth over the past decade.

Services are by far the largest component of the Australian economy, accounting for some 70% of GDP and employment. Total services exports stood at around \$89 billion in 2008-09, 1.7 times greater than suggested on the basis of the level of cross-border services exports; embodied services in merchandise exports were estimated at about \$35 billion (ITS Global 2010). These were primarily in property and business services, transport and storage, wholesale trade, and mining services; key 'carrier' exports are in minerals. Australian overseas subsidiaries (including joint ventures) deliver substantial services, with estimated annual sales of over \$100 billion (ITS Global 2010). Embodied services highlight the critical link services have to competitiveness.

The paper is structured as follows. Section 2 looks at the economics of services trade liberalization, including

why unilateralism matters most. Section 3 examines Australia's PTAs, and the increasing role played in Australian trade policy. Section 4 discusses liberalizing services trade through PTAs, including their inherent limitations. Section 5 draws on Australia's experience with using PTAs in services. Section 6 highlights the essential role that transparency coupled with unilateralism must play in advancing meaningful and sustainable trade-related reforms, especially in services where barriers tend to be behind the border. Section 7 examines recent developments in Australian trade policy likely to impact on PTAs in services and liberalization more generally. Section 8 concludes the Paper.

2. Australian Services Trade Liberalization

The Australian economy derived significant benefits from the trade and investment liberalization that began in the mid-1980s.² These unilateral, comprehensive micro-economic and related structural reforms, which reduced domestic trade barriers without the need for any specific international engagement, improved substantially Australia's economic efficiency and performance (Banks 2010a). While the unilateral domestic reforms remain incomplete and require more comprehensive efforts, the Australian economy is now far more open.

Australia no longer relies primarily on unilateral reforms and instead has regressed by embracing the PTA

² These reversed Australia's highly protectionist "inward-looking" post-World War II policies.

“frenzy”. Due to the revival in flawed mercantilist thinking linked to negotiated forms of liberalization, especially through discriminatory bilateral/regional trade agreements, to focus trade policy on its external rather than the domestic dimensions, DFAT has adopted completely the wrong perspective and now become more the problem than the solution in achieving effective trade policy (Trebeck 2009).³ Despite the Government’s rhetoric of only negotiating so-called “comprehensive” and WTO-compatible PTAs, they remain restrictive by excluding key issues and/or establishing ongoing “talk fests” that “while sold as significant” effectively enable such sensitive areas to be managed by the trading partners rather than to be liberalized.

2.1 Unilateralism matters most

A country benefits most from its own trade-related liberalization, not from trading partners reducing trade barriers. Lowering trade and investment barriers benefits countries by improving resource allocation and efficiency from access to lower import prices and increased availability of capital, labor and knowledge, thus enhancing competitiveness and productivity (PC 2010).

In terms of liberalization and economic benefits to Australia, the PC resoundingly rejected PTAs in favor of unilateralism supported to the extent possible by

³ Trebeck suggests relocating trade policy responsibility to Treasury to enable the economy-wide arguments and interests to receive fuller and more rigorous assessment.

multilateralism (PC 2010). The potential advantages of unilateralism are especially apparent in services given that they are typically protected by complex behind-the-border regulatory measures (e.g. regulations and institutional arrangements restricting competition) that generally cannot be liberalized by PTAs. Expecting governments to significantly liberalize measures in PTAs (and multilaterally) is wishful thinking, that also fails to appreciate how essential unilateralism is to implementing sound reforms. Trade policy is not trade negotiations and nor are policy measures something best determined by negotiations. Thus, trade negotiators generally do not negotiate actual policy measures, and play a minor role in liberalization, a preferable result given the non-economic outcomes such negotiations would in all likelihood deliver.⁴ Growth-promoting policies do not depend upon trade negotiations, but rather on governments adopting sound unilateral outcomes as part of their on-going micro-economic reform programs.

Most trade liberalization, including in services, has and is occurring unilaterally, in recognition that the reforming country benefits most.⁵ Providing preferential access may on occasions be welfare enhancing but it will almost always be welfare limiting (if not welfare-reducing) compared to unilateral MFN liberalization. Strengthening these domestic outcomes offers the best prospects of

⁴ The main exception is outside services, namely tariffs whereby PTAs negotiate applied discriminatory rates unlike in the WTO where MFN bindings are negotiated.

⁵ Well over two-thirds of actual global tariff reductions between 1983 and 2003 came from unilateral reforms, much of which occurred in developing economies (Hoekman, Mattoo and Martin 2009).

advancing services liberalization, which must form an essential part of improving any economy's competitiveness and productivity.

2.2 Rent-creating versus cost-increasing barriers

Trade costs in services largely relate to regulatory measures that either create entry barriers or increase the cost burdens facing firms, in addition to geographical, cultural, and institutional differences (Miroudot, Sauvage and Shepherd 2010). Some services barriers primarily increase costs of suppliers by raising the real resource cost of producing a given quantity of output (i.e. reduce price-cost margins). Many of these barriers arise from broad competition policy settings that non-discriminate in a trade sense whereas others may discriminate, such as foreign businesses and professionals having to incur retraining and accreditation costs to operate across borders. Other barriers to services trade (e.g. quantitative restrictions) artificially restrict supply and primarily create rents (i.e. raise price-cost margins). Lowering these barriers, whether preferentially or non-preferentially, may have limited economic welfare gains compared to reducing cost-raising barriers. This is because while reducing rent-creating barriers will improve allocative efficiency by re-allocating resources to more productive uses, removing cost-raising barriers effectively lifts productivity that both releases resources to other uses and also enable the affected sector to cut costs, and possibly to expand. Such measures would benefit domestic and foreign-service providers. Thus, the welfare gains from removing measures that generate real costs are likely to greatly

exceed those from abolishing measures that generate rents to domestic agents (Francois and Hoekman 2010, Dee 2009).

Identifying which services trade barriers are rent-creating or cost-raising is difficult, largely due to them operating “behind-the-border” and embedded in complex domestic regulatory legislation, often aimed at meeting legitimate social and economic objectives but also open to misuse as protectionist measures. For example, prudential controls help maintain an efficient and well-functioning financial sector, regulation of natural monopolies constrain market power abuse, and licensing or accreditation requirements on standards protect consumers by overcoming asymmetric information. Service barriers can have both rent-creating and cost-raising impacts (e.g. non-discriminatory market access barriers that create a domestic monopoly by prohibiting both domestic and foreign entrants). Hence, assessing the impact of trade restrictions on services trade and ensuring those offering the greatest economic benefits are reformed first are so complex that such reform should not be relegated to the whimsical outcomes of trade negotiations (even assuming they are capable of delivering actual reforms).

Australia’s past unilateral trade-related reforms have secured the greatest economic gains irrespective of the actions of other countries. Services liberalization largely extended this unilateral approach. As goods markets were opened to import competition, manufacturers increasingly saw the need to access efficient services at world prices to compete. Growing interest in services culminated in the

GATS being negotiated in the WTO and the subsequent proliferation of PTAs as so-called “new-age” or “third wave” agreements.

3. Australia’s PTAs

While Australia initially resisted PTAs, favouring instead multilateralism as a distant second-best alternative to unilateralism, it joined the global preferential fray by negotiating its first PTA in 2003 with Singapore (apart from the longstanding agreement with New Zealand (ANZCERTA) that formalized many expanding economic connections as both countries unilaterally reformed). Further PTAs followed. The need to liberalize services internationally was seen as a major policy driver for PTAs, even though it was generally acknowledged that successfully liberalizing services trade required substantial doses of unilateralism to tackle domestic regulations, as was being highlighted in the shallow outcomes of the GATS negotiations of the Uruguay Round and the offers in the Doha Round.

The shift towards PTAs coincided with a more subtle and negative development in Australian trade policy. As the practical emphasis veered back towards negotiated, especially preferential, forms of liberalization, Australian trade policy began to focus more on these avenues at the expense of unilateralism. Its move to PTAs reflected a breakdown in Australia’s commitment to open and transparent processes that supported unilateralism, and corrupted domestic policy setting and processes (Garnaut

2010a and 2010b).⁶ Reversing the associated domestic deterioration in the climate of opinion about the benefits of trade liberalization requires challenging the enhanced legitimacy of conceptions of narrowly defined reciprocity, and re-establishing the role of independent, transparent policy analysis (Garnaut 2003).

Australia's PTAs follow the international convention of being deceptively called Free Trade Agreements (FTAs). In addition to an FTA with Singapore (SAFTA), Australia has FTAs with ASEAN (with New Zealand, AANZFTA), Chile (ACFTA), Thailand (TAFTA) and the United States (AUSFTA). It concluded its latest PTA with Malaysia in May 2012.⁷ It is negotiating PTAs with China, GCC, Indonesia, Japan, Korea, Pacific Islands (PACER), India, and the Trans-Pacific countries of Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Singapore, Peru, the United States and Vietnam (TPPA). While Australia has no service-specific PTAs, all PTAs include services, using either a positive or negative list approach (Box 4). Key common provisions on services in these "third wave" PTAs cover national treatment; mutual recognition of selected professional qualifications; relaxed restrictions on

⁶ The stalling of Australia's unilateral trade liberalization was compounded by the ascendancy of narrow conceptions of "reciprocity" with trading partners, and by the policy-making processes behind the Cabinet decision in December 2000 to seek an FTA with the United States; no public service assessment or preferably independent transparent analysis was conducted on its economic effects, and it was subsequently justified by highly constrained consultancies (Garnaut 2003).

⁷ The Malaysia-Australia Free Trade Agreement is undergoing domestic ratification in both countries; the earliest it could commence operation is 2013.

commercial presence by foreign-service providers; and to varying degrees, attempts to harmonize regulatory frameworks (PC 2010).

Australian policy has been to seek in principle comprehensive PTAs. In services trade and investment, PTAs appear mainly motivated to limit foreign discrimination against Australian exporters rather than to gain preferential access; to include arrangements for developing mutual recognition of standards and professional qualifications; and to provide for the temporary movement of employees and business people to work in partner countries (DFAT 2010a). Australia's key negotiating objectives have indeed in practice been to obtain, and to the extent possible, retain preference margins for Australian exporters, and to use services trade and investment liberalization as vehicles for achieving priority business objectives regarding behind-the-border regulatory barriers (ASR 2008). However, to the extent that Australian PTAs in practice do not engage in actual liberalization at home or in its trading partners but rather focus on negotiating only "on paper" commitments, they fail to achieve this objective, and instead end up becoming more "gloss" than substance.

Australia's PTA patchwork already shows the signs of potentially inefficient and trade damaging overlapping agreements (the so-called "spaghetti" or "noodle" bowl effect). Australia's seven PTAs cover 13 trading partners, with multiple memberships. Singapore, Thailand and Malaysia are covered by two PTAs. Eight PTAs are currently being negotiated, covering some 20 trading partners plus the Pacific Island economies (e.g. Papua

New Guinea and Fiji). When negotiated, New Zealand and Singapore will each be members of three Australian PTAs while Indonesia, Brunei, Chile, US and Vietnam will each be members of two Australian PTAs. There are no signs that Australia is attempting to rationalize its PTAs and/or to remove duplication; indeed the opposite. Australia's peak services group, the Australian Services Roundtable (ASR), believes Australia's inefficient bilateral PTAs must be significantly redesigned.

While from a trade negotiations perspective, Australian PTAs appear to be and are politically sold as major achievements, such outcomes are more apparent than real. They are highly duplicative, including of multilateral rules and obligations, and have added little to Australian "on paper" commitments, and even less in practice to reforms in terms of actual or "on-the-ground" liberalization (Table 1). Indeed, PTAs have generally done little more than re-hash WTO commitments on all sides, and have been misleadingly portrayed as substantive. This WTO re-hash is totally unnecessary given that all parties to Australian PTAs are also WTO members. Such PTAs would be more transparent and less deceptive if they included only those differences negotiated in the PTA and leaving out each parties' WTO commitments. In this way, seemingly substantive and comprehensive PTAs would in most cases become "wafer-thin" and more easily seen for their lack of achievement.⁸ Moreover, many PTA

⁸ PTAs also duplicate many other existing provisions. For example, the minimum standard of treatment and conditions on expropriation for foreign investors included in AUSFTA are intended to reflect customary international law and partly correspond to provisions in both the Australian and US Constitutions (Mitchell and Voon 2009).

provisions affecting foreign investment in services repeat, but generally fall well short of, those found in respective Bilateral Investment Treaties (BITs). PTAs (like GATS) should also include actual measures so that the commitments can be compared with the existing situation, thereby improving transparency and indicating the extent of “binding overhang” and any areas where actual liberalization has occurred as a result.

Table 1: Poor performance of Australian PTAs in achieving domestic services liberalization

PTA	Improve ments	Comments
AANZFTA	Virtually none	Mainly re-hash of WTO commitments; added ‘unbound’ Mode 4 in MA & NT; replaced a few ‘unbound due to non-feasibility’ entries in Mode 1 with ‘none’; added a few already liberalized sectors; made GATS-minus commitments; and slightly improved access of employer-sponsored contractual serviced suppliers (Mode 4).
AUSFTA	Virtually none	Higher screening threshold given in sensitive services to US investors, GATS-minus commitments (Adlung and Morrison 2010).
SAFTA	Virtually none	Mainly re-hash of WTO commitments in a ‘NAFTA-styled’ agreement (negative listing)
ACFTA	Virtually none	Mainly re-hash of WTO commitments in a ‘NAFTA-styled’ agreement (negative listing)

TAFTA	Minimal	<p>Mainly re-hash of WTO commitments; slightly liberalized temporary access by Thais to labor market without market testing, including for employer-sponsored contractual serviced suppliers, especially chiefs; made some GATS-minus commitments; added a few already liberalized sectors; replaced a few 'unbound due to non-feasibility' entries in Mode 1 with 'none'; CA in MA & NT allowed in several banking services (little liberalizing impact). Added insurance relating to maritime shipping and commercial aviation, space launching and freight (including satellites) covering goods being transported, vehicles transporting the goods; and goods in international transit, and reinsurance and retrocession and the services auxiliary to insurance e.g. consultancy, actuarial, risk assessment and claim settlement services – cross-border supply as a principal, through an intermediary or as an intermediary is permitted. CA permitted. Otherwise all unbound.</p>
ANZCE RTA	Minimal	<p>US higher screening threshold in sensitive sectors extended to New Zealand investors</p>

Source: Authors' assessments.

4. PTA Limitations in Liberalizing Services Trade

Because of the nature of trade barriers to services, PTAs (and the WTO) are unlikely to be effective in reducing many non-discriminatory or even some discriminatory market access barriers. PTA negotiations tend to focus on the removal of national treatment barriers that explicitly discriminate against foreign suppliers. This is hardly surprising given that only provisions that discriminate against and between foreigners can be readily liberalized preferentially (Dee and Findlay 2007a, Dee 2009).⁹ Discriminatory market access barriers are also likely to be downplayed in PTAs (e.g. foreign ownership limits).¹⁰ Also, since the Government's main commercial motive for negotiating PTAs is to obtain preferential access for service exporters, discriminatory national treatment barriers that can readily favor them over suppliers from other countries will be targeted, especially given the "request-and-offer" modalities used to negotiate concessions (including in the WTO). PTAs focus mainly with issues between domestic and foreign suppliers, while the real reform issues are between incumbent and other domestic suppliers.

⁹ For measures to be preferably liberalized, they must be capable of easily being implemented in a way that can discriminate not only between domestic and foreign suppliers, but also by country of origin. Non-discriminatory market access limitations are thus poor fits for preferential liberalization, since it would require allowing domestic entry at the same time as permitting only foreign entry from preferential countries.

¹⁰ Maintaining discriminatory or preferential market access restrictions, such as different foreign equity limits, is likely to be fraught with implementation problems as foreign investors respond by shifting origin to become eligible for preferential access (assuming that PTAs have liberal "denial of benefits" clauses).

There seems no escaping the fact that significant services liberalization of the main trade restrictions can only be successfully tackled unilaterally because of the nature of the measures (i.e. embedded in domestic legislation and the difficulties of liberalizing preferentially). PTAs (and especially the WTO) may marginally help but are no substitutes for unilateralism. The politics of services reform differs from that of goods; additional foreign market access is not required as part of a big political bargain to offset the local resistance to reform in services, being largely about FDI, and when barriers are removed local activity can actually increase (Drake-Brockman and Findlay 2011). Furthermore, in many cases the service businesses themselves push for services reform to remove unnecessary and costly regulation or rules.

Most services trade barriers likely to raise costs cannot be eliminated through bilateral negotiations, and for the most part can be addressed only through domestic competition policy reforms; while negotiations can hope to eliminate some particularly restrictive regulations, for example, to agree on mutual recognition of some professional qualifications, they cannot enforce complex legislative changes, such as better competition policies (Elek 2010).

Of real value to policy makers and the proper benchmark by which to evaluate the liberalizing impact of PTAs (and the GATS) is to assess the extent to which they actually reform measures. In this respect, the picture both in Australia and elsewhere is bleak, and the extent to which PTAs (and the GATS) “lock in” past unilateral

reforms is over-stated.¹¹ Usually when a country's PTA commitments exceed those in the WTO, it is primarily through new rather than improved existing bindings when arguably the later is more likely to imply real liberalization (Dee 2009). Similarly, comparing a country's PTA and GATS commitments misleadingly avoids the main policy question, namely to what extent have PTAs liberalized "on-the-ground" more than GATS

Analysis based on commitments cannot therefore measure the extent to which PTAs achieve actual liberalization, nor assess the degree to which any liberalizing commitments would increase trade. Indeed, such analysis can badly mislead. For example, a country with open trade policies and few commitments would be found to be far less liberal than a country with substantial trade restrictions but many more scheduled commitments. Such erroneous comparisons and assessment would also apply at individual sub-sector and across-mode comparisons. It is not commitments that matter but actual policy measures. It is far better for a country to have open trade and investment regimes in reality and poor commitments than to have restricted regimes and liberal commitments. Often this fundamental distinction is lost as

¹¹ Working with countries' schedule of commitments therefore creates an overly rosy picture of the extent to which PTAs (and the GATS) have actually liberalized measures, thereby potentially misleading policy makers and governments. For example, a country scheduling a new sub-sector "unbound" in its positive list is often seen as liberalizing, even though in reality nothing has changed, even in terms of bindings. Similarly, adding new service-sub sectors to the list with partial or full commitments is seen as liberalizing, even though policy measures have not changed.

trade policy becomes confused with trade negotiations, and the impression often created that commitments matter as much as actual measures, and that trade negotiations are actually setting trade measures and policy.¹²

How much discipline PTAs impose, whether in terms of policy changes “on paper” or in terms of actual implementation, is little studied, making it difficult to argue that in practice specific agreements live up to what theory “predicts” they will achieve as a lock-in device and adding reform credibility (Francois and Hoekman 2010). PTAs appear to have wider coverage than the GATS but their contribution with respect to actual policy change and implementation is difficult to assess (Drake-Brockman and Findlay 2011). Most PTAs (like the WTO) have not achieved significant additional services liberalization, and while PTAs can be useful “laboratories” for cooperation on specific sectors or policies, including mutual recognition and the adoption of common standards, most services policy reforms tend to be implemented unilaterally... there is not much compelling evidence that PTAs are going significantly beyond already applied services policies (Hoekman 2008). Even where PTAs significantly improve on GATS offers, they only “sometimes” even lead to real market liberalization (Roy, Marchetti and Lim 2006). Trade agreements do not appear to have played much of a role, if any, in generating significant policy reforms (Francois

¹² Blurring this distinction seems to be often intentional, especially among trade officials and governments. It enables them to give the impression that much trade reform is occurring when in fact not the case, a potentially dangerous development that can backfire and undermine genuine efforts to unilaterally reform.

and Hoekman, 2010). This is certainly true of Australian PTAs.

5. Australia's Experience with PTAs on Services

The economic benefits of Australian PTAs have been oversold (PC 2010). They have only modestly increased Australia's national income, with only limited impacts on reducing trade barriers and meeting other policy objectives. Australia would have been better served in sustaining strong economic performance as a non-discriminatory free trading economy, strongly focused on removing impediments to domestic economic efficiency, than by contributing to the scramble for PTAs, even in an increasingly fractured international trade environment (Garnaut 2003).

PTAs covering services have been supported in Australia for two main reasons. First, they are seen as a means for Australia to open overseas markets to advantage exporters (offensive), or to prevent them being disadvantaged by diversion to exporters in third markets with preferential access (defensive). Second, PTAs are seen as a means of liberalizing Australia's barriers to services trade and of 'locking in' domestic reforms. While domestic liberalization produces most economic gains to Australia, the first reason usually attracts most attention from trade negotiators and other PTA supporters. While appearing separate reasons, they are really inter-twinned since PTAs inadequately opening Australia's services market are also unlikely to successfully open export markets, and vice versa. This is an inevitable outcome

given the mercantilism approach to trade negotiations whereby all governments negotiate by trying to gain maximum concessions from trading partners while giving as little market opening in return as possible.

Many services influencing the international competitiveness of Australian businesses are associated with significant network externalities (e.g. transport services; electricity, gas and water, postal services and telecommunications). However, as already indicated, these are the least suited to negotiated liberalization, including preferentially. PTAs are not well-suited to addressing “behind-the-border” barriers (e.g. good governance, competition policy and domestic regulations more broadly); these can be better achieved through bilateral cooperative and regional mechanisms, such as those of APEC (Treasury 2010).

Australia PTAs have not significantly advanced Australia’s services liberalization, and in a few significant cases have resulted in Australia preferentially liberalizing measures when non-discriminatory unilateral liberalization was required (PC 2010, and Table 1). The main case was preferentially providing US investors higher investment screening thresholds under AUSFTA.¹³ Despite being

¹³ Foreigners must in advance notify if acquiring an interest of 15% or more in an Australian business valued above A\$231 million or for US investors A\$1,005 million, except in the prescribed sensitive sectors of mainly media; telecommunications; and transport (including airports, port facilities, rail infrastructure, international and domestic aviation and shipping services provided within, or to and from, Australia).

granted from 2005, these have not been either multilaterally extended in Doha offers or applied unilaterally, but have been subject to negotiations with China and Japan under PTA negotiations. Preferential thresholds make no economic sense, and risk diverting investment to less efficient US investors that detracts from Australian welfare, thus making it highly ambiguous whether these PTA developments are in Australia's economic interests. Doubt exists as to the practical significance of these higher thresholds given Australia's liberal FDI regime and that the screening thresholds have only stopped FDI projects a few times on national interest grounds, which questions why such measures were negotiated; another example of insignificant outcomes being negotiated in PTAs while meaningful policy measures (such as unilaterally increasing or preferably removing these thresholds) are put aside. Alternatively, if higher thresholds are significantly beneficial to US investors it means that the welfare-reducing risks for Australia are greater. While Australia should multilateralize these PTA preferences, in reality this has not happened as they have become "negotiating coin" in future PTAs. Australia has recently extended the higher US investment screening thresholds preferentially to New Zealand as well, in return for its investors' receiving higher thresholds.¹⁴

The need for unilateral reforms, especially in services while allowing governments to maintain sovereignty and control over policy, requires transparency

¹⁴ ANZCERTA contained no investment provisions until the Investment Protocol was signed under the ANZCERTA umbrella in February 2011.

in domestic policy making and its likely effects to be improved. Domestic institutions that highlight the economy-wide impacts of policy decisions would help (PC 2010).

6. Advancing Services Liberalization

Unilateral reform is the most direct means for reducing Australia's trade and investment barriers; pursuit of PTAs can create incentives to delay unilateral reforms and entail administrative and compliance costs (PC 2010). The PC recommended Australia examine further unilaterally reductions in trade and investment barriers as a priority from pursuing liberalization through PTAs, and not delay such beneficial reforms in order to retain "negotiating coin" (PC 2010). PTAs are not a substitute for properly designed strategies for economic reform. However, they are limited in the policy changes they can drive to encourage and stimulate programs to address "behind-the-border" barrier to facilitate a more open and transparent business environment (BCA 2010).

Of particular significance since PTAs are often associated with the pursuit of non-economic objectives, such as strategic alliances, these objectives can typically be addressed more effectively by other means; PTAs are generally not the ideal means for advancing non-economic interests in their own right (PC 2010). Governments should only use PTAs for non-economic purposes if they know alternatives to be more costly, and with a clear notion of

what is an unacceptable price to pay for achieving these non-economic goals.¹⁵

Because the big gains in services are from reforming non-discriminatory, anti-competitive measures affecting both domestic and foreign suppliers, services reforms are best handled domestically where the political economy considerations principally pit incumbents against new entrants, and not domestic versus foreign (Dee and Findlay 2007a and 2007b). The main risks to reform are to focus too much on national treatment, which typically happens in both regional and multilateral trade negotiations (Dee and Findlay 2007a and 2007b). The steps in sensible unilateral reform are: (i) transparency (ii) review and evaluation, and (iii) domestic reform (Dee and Findlay 2007a and 2007b).

Transparency is a vital first step to any trade-related reforms. Even knowing the full array of a country's trade-related barriers, including at the state or provincial level, is a major achievement, let alone analysing their effects and disentangling these from protectionism and legitimate outcomes.

Australia is one of very few developed countries to have substantially liberalized its industry protection regime unilaterally, outside the conventional concession-swapping milieu favored by other countries (Banks 2010b). The PC has been an important part of the institutional architecture

¹⁵ On a similar point it is also worth bearing in mind that WTO-plus PTAs are not necessarily better, such as their coverage of core labour standards and overly strict IPR protection (Heydon 2010).

for regulatory reform in Australia and provides a model with many features that could usefully be emulated overseas (OECD 2010).¹⁶ The WTO has also noted the important contribution the PC and its predecessors have made to domestic transparency and Australian trade-related reforms (WTO 2007). Since unilateralism is fundamental to setting trade policy, including liberalizing services, improving domestic transparency and associated institutional arrangements is essential. Without it, review and domestic trade reform is unlikely to be complete – transparency is the key.

7. Australia’s “Back to the Future” Trade Policy, including on Services

In response to the PC Study, the Government released through the recently appointed Minister of Trade, a new Trade Policy Statement in April 2011, urging for a return to past successful unilateral reforms and less reliance on traditional PTAs (DFAT 2011).¹⁷ Significantly,

¹⁶ While few, if any countries, have replicated the PC, New Zealand established a Productivity Commission in early 2011.

¹⁷ Trade Minister Emerson was Microeconomic and Trade Policy Adviser to then Prime Minister Hawke. The Government’s Statement rejected entirely the minority opinion of the external Associate Commissioner appointed for the Study, an experienced trade lawyer and former US Trade negotiator and Deputy Director of the WTO. The minority opinion disagreed with most of the PC’s recommendations, supporting analysis and findings, and was carefully considered by the PC in reaching its conclusions and recommendations (PC 2010). The minority opinion was very sympathetic to DFATs support of PTAs as contained in its two submissions to the Study.

the Government accepted almost all of the PC's recommendations.

Consistent with the fundamental objective of trade policy to increase national prosperity, the Statement re-set Australian trade policy based on five guiding principles, namely unilateralism; non-discrimination; separation; transparency; and the grand unifying principle of trade policy as an indivisible part of overall economic reform (Box 1).

Box 1: Principles Guiding Australia's Trade Policy

Unilateralism: Pursue pro-competitive economic reform in its own right by further opening the economy to trade and investment and avoid adopting a bargaining-chip approach of refusing to liberalize unless trade partners offer similar openings as a *quid pro quo*. In PTAs, negotiations will be assessed according to national interest, excluding considerations of how Australia had to give up, or 'pay', by way of domestic economic reform. Presumably such an assessment of national interest from PTAs will be based on what actual liberalizing impact the PTA will have both in Australia and in the trading partner, and not simply on the basis of 'on paper' commitments which may result in no economic gains.

Non-discrimination: Will help address the proliferation of PTAs which have MFN treatment more the exception than the rule; non-discriminatory trade agreements offer better long-run returns for Australia. Future PTAs will not insist

on entrenching preferential treatment, just an opportunity to compete on level terms.

Separation: Clearly separate trade and foreign policies, which had deliberately become entangled since the late-1990s. This would presumably mean dispensing with so-called “economic diplomacy”.¹⁸ Australia will consider negotiating a PTA with any country genuinely interested in reducing its trade barriers and will only sign it if it is demonstrably in Australia’s national interest. It will not allow foreign policy or geo-political considerations to dictate to parties and on the content of trade deals.

Transparency: Rather than possibly misleading decision makers and the public by modelling hypothetical PTAs based on assumptions of full liberalization, including on services and investment, only final or actual arrangements negotiated will be modelled, and be independently peer reviewed.

Indivisibility of trade policy and economic reform: Trade policy and microeconomic policy are as one; the best trade policy is domestic economic reform – a productivity-raising, competitiveness-enhancing microeconomic reform program supported by responsible fiscal policy.

Source: DFAT 2011.

¹⁸ Separation of political from economic diplomacy has been increasingly made more difficult by having trade and foreign affairs handled by the one department (DFAT), even though with two ministers.

While in parts the commendable Statement is unclear, and even contradictory, it sees PTAs as a continuing priority, provided they meet the WTO benchmarks or are “high quality, truly liberalizing trade deals that support global trade liberalisation”, which will be offered to all of its trading partners (DFAT 2011).¹⁹ However, the operational meaning of this is unknown. It should imply ensuring that any future PTAs in services are genuinely liberalizing both in Australia and overseas with respect to liberalizing actual measures restricting trade in services, and that simply achieving more commitments “on paper”, especially with substantial binding overhang would fail the test. The benchmark in deciding whether a PTA is “truly liberalizing” should not be commitments in other PTAs (or the WTO), but rather whether it is liberalizing ‘on-the-ground.’ Moreover, previous trade ministers have echoed similar views, yet in reality the PTAs concluded by Australia have fallen well short of these standards. Of greater government priority than concluding new PTAs would be to ensure that current PTAs are improved to satisfy these standards.²⁰ However, this in itself is likely to threaten additional economic risks of setting domestic policies affecting services based not on sound unilateral

¹⁹ Since the Trade Policy Statement was released, the Government announced the launching of PTA negotiations with India in May based on achieving a high-quality, truly-liberalising trade deal that supported the multilateral trading system (Emerson 2011).

²⁰ The Australian Treasury also recently expressed policy concerns over Australia’s growing PTA proliferation, including in services. It highlighted that PTAs were not meeting Australian needs, their proliferation had not build support for multilateralism, and that they and had delivered only modest preferential market access outcomes at the cost of reduced policy reform flexibility (Treasury 2010).

micro-economic outcomes but rather on negotiating expediencies.

Steering a strong unilateral reform agenda, including in services, as called for in the Trade Policy Statement will require the Government to re-focus efforts on micro-economic impediments currently undermining productivity growth. Matching the Statement's objectives with actual policy reforms will necessitate a unilateral reform agenda being developed and implemented. This has not emerged yet, and so the Government's unilateral reform priorities remain unclear. Indeed, it seems so far at least that nothing has changed with Australia continuing to pursue PTAs and over-selling their economic benefits.

8. Conclusions

Australia's pre-occupation with PTAs in the past decade has come at a substantial economic cost to the economy (PC 2010). PTAs in services have disappointed in achieving both economic and non economic objectives. They have not been truly liberalizing, either in Australia or in trading partners, being concerned with negotiating commitments "on paper" rather than policy reforms "on-the-ground". Trade policy is not trade negotiations, and these do not generally set trade measures; these are generally a "side-show" to policy formulation which can easily become the "main-show", as the case in Australia. While it is commonly suggested that PTAs may provide a useful focal point for countries to strengthen institutions and adopt legal reform, international evidence of this happening is weak. Australian PTAs have certainly not

lead to such outcomes, either in Australia or its partners to such agreements.

On the non-economic front (e.g. strategic alliances or other foreign policy matters), such objectives can be better met outside PTAs. They have been associated with derailing Australia's highly successful unilateral approach to trade-related reforms based on sound domestic transparency and economic analysis, led by the PC (and its predecessors) and other domestic economic reform departments, especially the Treasury. The re-ascendancy of DFAT as the main setter of trade policy has seen a strong move away from unilateralism to negotiated forms of trade liberalization, especially PTAs given the almost certain failure of the Doha multilateral negotiations. It is thus vital for Australia's productivity growth, which has suffered in recent years due largely to lack of essential micro-economic, including trade-related, reforms, especially affecting services, to get back on track and to focus renewed attention to unilateralism. This is the only effective means of especially reforming services given their complex nature of barriers to trade that are usually embedded in domestic regulation. PTAs are even less well-equipped than the WTO in reforming the service barriers that really matter to achieving improvements in national welfare, namely market access barriers that raise costs and rents, thus also distorting resource-use efficiency as well as effectively reducing productivity, rather than discriminatory national treatment measures which are mainly the concerns of trade negotiators.

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Summing up, PTAs in services have to date been a major distraction from what really matters, reforming Australia's barriers to trade in services, which as for goods is the main source of economic gains to the country, as opposed to bargaining to have other trading partners open their markets. Australian PTAs (and the GATS) have achieved little in contributing to real liberalization, which is just as well since such negotiated actual outcomes would more than likely result in inefficient measures, such as discriminatory ones, or in regulations that may not be welfare-enhancing for Australia. Because of the complexity in reforming services trade barriers, it is unrealistic (and undesirable) for such policies to be set at the negotiating table.

Trade policy in Australia, is very unbalanced, relying too much on weak and partial "trade-light" PTAs which have not liberalized where it matters. Such agreements have thus not been a driving force for regional or global integration. This is despite repeated assurances by trade officials and others with vested interests in saying so that Australia's PTAs are of world-best standard and among the most comprehensive. A return to a focus on unilateral liberalization, hopefully supported by a more active multilateral system, is required to advance trade in services liberalization and reforms. PTAs should be recognized for what they are – failures to achieve genuine liberalization and a distraction for policy makers and governments from what really counts. PTAs are not an end in themselves, nor a means to what the real end should be in all countries, namely promoting unilateral trade-related reforms as part of transparent and evidence-based micro-

economic or structural policies. Based on sound economic reasoning and the Australian experience, PTAs cannot genuinely liberalize services trade. They generate outcomes that reflect mainly negotiating expediencies rather than what would be sound economic reform e.g. enhanced discrimination or non-transparent changes that may not correctly reflect the national economic interest. At a time when Australian PTA activity is at its highest, Australia's unilateral commitment is at its lowest. Unilateralism is always likely to be undermined as long as PTAs "rule the policy roost", which has also contributed to the failed Doha outcome. Australia's Trade Policy Statement provided a good opportunity to repair its trade policy, but unfortunately the passage of time is suggesting its practical impact will be minimal.

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