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Trade in Financial Services Regionalism: Derivatives Clearing and Settlement in Economic Integration Agreements

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Abstract

Trade in financial services is integrated through Economic Integration Agreements (EIAs), in addition to the multilateral trading system developed under the WTO. Securities' clearing and settlement services have nowadays become more important than ever. The latter have gained enormous strategic relevance due to the global regulatory shift towards tasking clearinghouses to mitigate the risks associated with trading of OTC derivatives. This study assesses the liberalization levels of the financial services in the plurilateral trading system. It aims to shed light on the underlying dynamics that could explain the rationale behind international trade treaties. Most importantly, this contribution assesses the relationship between regulation of international trade and regulation of financial market infrastructure in order to bring into the spotlight problematic features that underscore existing silos in WTO Members' administrations.

Keywords

Regional Vs Multilateral trade in financial services, Preferential trading system, EIAs, Clearing and Settlement, GATS, Regulation of financial market infrastructure, Clearing house

JEL Classification: K40, K33

I. Introduction*

One of the most contentious issues of the ongoing Brexit negotiations is the treatment of clearinghouses once the UK is out of the European single market. UK's departure gives rise to problems relating to the supervision of clearinghouses for euro-denominated products. Additionally, clearinghouses are major profit generators for financial venues and that is why Frankfurt intensifies its attempts in attracting London's business.[1] Ultimately, the relationship that the EU and the UK will strike will define the relationship of their financial institutions. The scenario that seems more likely today would envisage an economic integration agreement similar to CETA. Understanding how financial services liberalization works in trade agreements is crucial to gain a broader perspective of the international supply of financial services. Financial markets are so interconnected that regulation of one state fundamentally impacts on other jurisdictions. This explains the US involvement and strong advocacy as regards the Brexit plans of clearinghouses.[2] The Commodity Futures Trading Commission, the US derivatives regulator, opposes the current plans because market disruptions could emerge and even threats to ban European banks from US financial market infrastructure. Thus, the regional integration of financial services is crucial for the operation of financial market infrastructure. Shedding light on the liberalization of regionalism and explaining its elements are this study's purpose

In particular, this paper aims to (i) map out how financial services' regionalism, illustrated by Economic Integration Agreements (EIAs),[3] compares and contrasts with the liberalization of financial services at the multilateral trading system, and to (ii) investigate the role of national financial regulations in that context. The increasing importance of regionalism in international trade, while multilateral negotiations under the World Trade Organization (WTO) have stalemate effects, makes this exercise highly relevant.[4]. One of the EIAs' objectives is to decrease or eliminate the barriers to trade in services and investment among their Members. This study assesses the liberalization depth of financial securities' *clearing and settlement* services in EIAs. To that end, I evaluate how the regulation of international trade contributes to the integration of financial services, on the one hand, and explore the transnational dynamics and trends that explain the integration of the service's sector in question, on the other. The recent proliferation of concluded EIAs on trade in services underscores their importance for international trade and policy, and at the same time brings into the spotlight the need for a better understanding of the plurilateral trading system's ramifications in the liberalization of services.

Carrying out this exercise is crucial to delineate the relationship between trade in services under disparate legal orders, namely, under the WTO and under EIAs. The mechanics and asymmetric architecture of the General Agreement on Trade in Services (GATS)[5] have been examined thoroughly

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1 See Financial Times, Philipp Stafford https://www.ft.com/content/abc6d4e4-93f1-11e8-b67b-b8205561c3fe .

2 See Financial Times, Philip Stafford https://www.ft.com/content/f9ba5588-d21a-11e8-a9f2-7574db66bcd5.

3 This paper has opted for using the term EIA, as employed in Article V of the General Agreement on Trade in Services (GATS), because securities' clearing and settlement services are embedded in international trade agreements regulating trade in services. However, the terms Preferential Trade Agreement (PTA) or Regional Trade Agreement (RTA) can be used interchangeably since they refer to the same type of agreements.

4 See for example Crawford J. and Fiorentino R. (2005), "The Changing Landscape of Regional Trade Agreements", WTO Discussion Paper 8; Roy M., Marchetti J. and Hoe Lim A. (September 2006), "Services Liberalization in the New Generation of Preferential Trade Agreements (PTAs): How Much Further than the GATS?", WTO Economic Research and Statistics Division, Staff Working Paper ERSD-2006-07; The World Bank (2005), Global Economic Prospects: Trade, Regionalism and Development report.

5 General Agreement on Trade in Services, Annex 1B to the Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994, UNTS No. 31874. The text is available in: WTO, The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts (Cambridge, Cambridge University Press 2017), at 357.

by literature. However, it is worth highlighting that the liberalization of trade in services is principally contingent on WTO Members' GATS commitments under Articles XVI, and XVII on market access, and national treatment, respectively.[6] The research question of this paper is not concerned with the GATS levels of liberalization *per se*, but rather the liberalization depth in EIAs. In that endeavor, the WTO Members' commitments under the GATS are used as the benchmark to measure how much beyond them the undertaken commitments in EIAs extend. The methodology of this study is developed in detail in the next section. The forthcoming paragraphs summarize the importance of clearing and settlement services for the integrity of financial systems, and their regulatory evolution as of today.

Financial instruments' *clearing and settlement* services have been regulated by international trade for the first time in late nineties, when the GATS Annex in Financial Services entered into force.[7] Since then, a lot has changed in terms of the services prominence in world economies' financial market infrastructure. In particular, the industry itself has been subject to numerous changes driven by the force of regulation across the globe. Regardless of the economic model followed by WTO Members and the underlying competition structures of clearing and settlement service suppliers, whether monopolistic, or oligopolistic, the interconnectedness of international finance cannot permit major operational discrepancies that can result in financial market disruptions, and potentially place the whole system's financial stability into jeopardy. Importantly, clearing and settlement services are traditionally tasked with addressing the risks associated with the trading of financial instruments, such as the failure of a counterparty to fulfill its part of the deal in a derivatives transaction or even the "loss" of a security due to its high exchangeability, being the "back-office" activity of trading securities.[8] That said, clearing and settlement services have been part of the financial markets since late nineteenth century,[9] but their relevance today has been shaped due to the regulatory swift responding to the 2007-2009 global financial crisis.

In the aftermath of the crisis, and in accordance with the G-20 mandate, financial regulations that place the functioning of clearinghouses in the epicenter of over-the-counter (OTC) derivative markets were crafted. The new role attributed to clearinghouses pertains to requiring the *mandatory clearing* of certain types of OTC derivatives,[10] that can potentially have a systemic spillover effect in case one of the counterparties to the transaction goes bust.[11] This regulatory change aspires to reduce the perils posed by derivative markets, while taking into consideration that additional costs levied to trading parties, by the posting of collateral. This regulatory trend is in sharp contrast to what used to occur, where financial institutions were free to choose whether they wanted to employ clearing services or proceed the transaction without. Accordingly, the whole business of clearing has developed since then, and interestingly, this study seeks to investigate if this regulatory swift has impinged on the liberalization of clearing services, traced in EIAs. The GATS commitments on clearing services are ubiquitous in the multilateral trading system. Nonetheless, they are not apt to capture regulatory evolution because they

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[6] WTO Members voluntarily enter commitments on market access (Article XVI), national treatment (XVII), and additional commitments (XVIII) in their GATS Schedules, which constitute treaty text, on the basis of their national preferences. Liberalization is attained in the multilateral trading system in accordance to these specific commitments. As long as WTO Members decide to open more services sectors to international competition from other WTO Members, more liberalization is achieved. Accordingly, there is a positive relation between the process of entering commitments and the liberalization of services.

[7] The GATS Annex on Financial Services explicitly refers in its indicative list to clearing services in par. 5(a)(xiv): settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments.

[8] For general literature on financial instruments clearing and settlement services in the European Union see D. Turing, Clearing and Settlement, 2017, Bloomsbury.

[9] For a historical narrative of clearinghouses see Neal L. Wolkoff and Jason B. Werner, "History of Regulation of Clearing in the Securities and Futures Markets, and Its Impact on Competition, The," *Rev. Banking & Fin. L.* 30 (2010): 313.

[10] Such as interest rate swaps, foreign exchange, and credit default swaps among others.

[11] This regulatory trend can be identified in all major global economies, and its efficacy on the basis of the G-20 standards is measured by the Financial Stability Board (FSB) annually.

are not updated by WTO Members. This paper seeks to identify whether EIAs are better placed to encounter these regulatory challenges.

Investigating the commitments undertaken by WTO Members for clearing and settlement services in EIAs, leads to measuring the depth of their liberalization, while aiming to take a grasp of the underlying dynamics that are the driving forces of the observed integration model. What are the geographical trends that contribute to the liberalization of international clearing trade-flows, or, what type of restrictions in the integration of these services are placed in EIAs are some of the questions to be addressed. This paper is structured as follows: Section II, sets out the methodology of the study. Section III, sheds light on the descriptive statistics and observations drawn by the study to deploy a comprehensive analysis of the stakes involved. Section IV, adopts a line of argument with regards to the relationship between the regulation of financial services and the law of international trade based on the findings of the paper. Finally, Section V concludes.

II. Methodology

One of the overarching objectives of this contribution is to establish a comprehensive typology of the commitments pertinent to *clearing and settlement* services in EIAs. Our analysis covers the 152 EIAs currently in force,[12] which have been notified to the WTO up to September 2018 under Article V (Economic Integration) of the GATS, under Article XXIV (Territorial Application – Frontier Traffic – Customs Unions and Free-trade Areas) of the General Agreement on Tariffs and Trade (GATT-1994), and the Enabling Clause (Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation on Developing Countries). The scope of this paper is limited to the agreements that the level of their integration utilizes the trade liberalizing toolkit provided by the GATS. Namely, deeply integrated economic unions are not examined because their inclusion would not add any value, as the tools employed to further integrate these markets (i) deviate from the traditional trade instruments and as a result cannot serve the purposes of this empirical study because they are not comparable, and (ii) represent a small fraction (12/152) of the number of agreements notified to the WTO.[13] The two main set of documents that this analysis is premised on are undoubtedly the *schedules of commitments*, and the *list of reservations* of the parties to the EIAs, which are usually in the form of annexes attached to the main agreement. Nonetheless, in numerous occasions recourse to the agreements' chapters and side documents, such as protocols, communication letters, understandings, and other documents associated with the EIAs is necessary to obtain a holistic perspective of this study's subject matter.

Henceforth, since the nature of this inquiry is to measure the liberalization of clearing and settlement services in EIAs, it is essential to clarify the tools that are employed to that end. Traditionally, trade in services is supplied through the GATS four (4) modes of supply: namely, cross-border supply (mode 1), consumption abroad (mode 2), commercial presence (mode 3), and movement of persons (mode 4).[14]

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[12] The WTO Regional Trade Agreements (RTAs) database has been used as main source to collect the data of this study. All EIAs that are reviewed here, alongside with the text of the agreements, the annexes and other related documents can be found in the linked database, https://rtais.wto.org/UI/PublicMaintainRTAHome.aspx.

[13] The 12 EIAs notified to the WTO that are not covered by this study are the following: EC (15) Enlargement, EC (25) Enlargement, EC (27) Enlargement, EC Treaty, EU (28) Enlargement, Eurasian Economic Union (EAEU), Eurasian Economic Union (EAEU) – Accession of Armenia, Eurasian Economic Union (EAEU) – Accession of Kyrgyz Republic, European Economic Area (EEA), European Free Trade Association (EFTA), Southern Common Market (MERCOSUR), Caribbean Community and Common Market (CARICOM).

[14] It is well-documented that the evolution of technological means that financial services are supplied transnationally has created a legal problem in the interpretation of undertaken commitments for *modes 1 (cross-border supply) and 2 (consumption abroad),* either under the multilateral trading system, through the GATS schedules, or under EIAs. For analyses on this issue, and the possible problematic implications see WTO, Council for Trade in Services, Committee on Trade in Financial Services, S/C/W/312, S/FIN/W/73, 3 February 2010, par. 36, p. 10; Judson O. Berkley, A Framework Agreement for Electronic Commerce Regulation under the GATS, 1-2 (Institute for International Finance, 2001); George

When it comes to wholesale financial services, such as the ones of clearing and settlement, immediately mode 4 becomes redundant, because these types of services are provided by large financial institutions, rather than by individuals. Therefore, this study examines the liberalization of clearing and settlement services for *modes 1, 2, and 3*. Furthermore, same as in the multilateral trading system, in EIAs the liberalization of financial services is effectuated through undertaken commitments on *market access*, and *national treatment*, which are contingent upon specific mode of supply. Thus, the modes of supply and the entered commitments on market access and national treatment are the existing variables that define the level of liberalization of clearing and settlement services in EIAs.

For the sake of clarity, it shall be underlined that while evaluating the level of liberalization of clearing and settlement services in EIAs on the basis of the abovementioned landmarks (modes of supply, and commitments), challenges emerge due to the different approach that countries adopt in scheduling their commitments.[15] Namely, the three more frequently met methods are: on the one hand (i) *positive lists*, which mirror the scheduling approach put forward in the GATS. In specific, countries in their *schedules of commitments* include all the services sectors and subsectors, and attached to them they inscribe whether they undertake particular commitments for market access and national treatment for the particular modes of supply; on the other hand (ii) *negative lists* follow the approach used for the first time in North Atlantic Free Trade Agreement (NAFTA). The negative list approach instead of schedules of commitments, has *list of reservations* which strictly refer to the measures that are not subject to full commitment (complete liberalization). Thirdly, *(iii) hybrid lists* have emerged as a model that combines characteristics of the two latter. For instance, hybrid lists use positive list for cross-border supply and negative lists for establishment. Traditionally, negative listing is closer than its positive counterpart to the objective of trade liberalization because it forces states to scrutinize their regulatory frameworks and check its compatibility with trade disciplines, before concluding their trade agreements, where they have to include these measures in their list of reservations *in concreto*. The challenges met in the process of collecting the empirics of this study lie with the inherent differences of the two approaches. To produce a comprehensive dataset that measures the level of liberalization of EIAs it is necessary to first compile and structure the data in a uniform fashion. To that end, in the process of compiling the data from EIAs with negative lists, I translated them into positive commitments so that the contribution can be more thorough and provide for a clearer picture of the overall EIA's *status quo*.

The question that next comes to mind relates to the methodology adopted to gauge the "depth" of the just-described liberalization. For starters, WTO Members have undertaken commitments in their GATS schedules for *clearing and settlement* services. These commitments naturally mirror the GATS asymmetric geometry, and are different for each and every WTO Member. Notably, this chapter investigates for the first time the clearing and settlement services' commitments of parties to EIAs. Once the commitments of EIA parties are mapped out, they are juxtaposed to the ones entered by the same countries in their GATS schedules. The outcome of the juxtaposition between the countries' commitments in EIAs, and their commitments under the GATS defines the liberalization depth. More specifically, there are 4 possible scenarios in that score: first, if country's *x* undertaken commitments in a EIA fall below the GATS threshold, then this is a *GATS-minus*. However, due to the existence of the GATS Article II on MFN, this category constitutes nothing but a legal fiction; second, if country *x* has entered in a EIA the exact same commitments, as the ones under the GATS, then we have a *GATS* liberalization depth; third, if the commitments of country *x* in a EIA go beyond the ones in the GATS,

A. Papaconstantinou, No GATS No Glory: The EU Regulation of Clearinghouses and WTO Law, EUI Law Working Paper 5/2018, p. 16-18.

[15] For thorough analyses with regards to the different approaches that parties to EIA use to opening their services sectors see Roy, M., J. Marchetti, and H. Lim, 2008. "The Race Towards Preferential Trade Agreements in Services: How Much is Really Achieved?," in Panizzon, Pohl, and Sauve, (eds.), *The GATS and International Regulation of Trade in Services*. New York: Cambridge University Press; Cf Juan A. Marchetti, 2011. "Do PTAs Actually Increase Parties' Services Trade?", in Bagwell, and Mavroidis (eds.), Preferential Trade Agreements: A Law and Economics Analysis. Cambridge University Press, pp. 214-220.

then this constitutes a *GATS-plus;* forth, if country *x* has not undertaken any commitments in the GATS, but it does in the context of the EIA, then this scenario is termed as *GATS-extra*. For the purposes of some figures and tables, third and fourth categories are merged under the following character, *GATS(+).*

This contribution aims first to empirically assess the liberalization levels of clearing and settlement services in EIAs, and second to explore the underlying dynamics and trends that spearhead the surveyed liberalization. For instance, an essential query that this study seeks to address relates to which geographical regions put forward the liberalization agenda for these financial market infrastructure services and if possible, interpret the reasons behind. The recent history of the GATS has taught us that it was the US, and its industry, alongside with the European Communities, at the time, that aspired and managed to introduce an international rulebook for the trade in financial services.[16] Has something changed in the course of the next two decades, or are the same regions the net exporters of financial services? The case study of clearing and settlement services is going to be a helpful guide in this respect. Next, other trends in terms of the specific services sector are discerned based on the empirics, such as the negative or positive listing and which is more prone to furnish liberalization. Additionally, new regulatory frameworks for clearinghouses across the globe, in the aftermath of the crisis, started being enacted around 2010. How does this regulatory trend blend in the liberalization of clearing services in EIAs? This study will try to give an answer to that as well.

After having contextualized the features of this paper and explained the methodological steps that the analysis undertakes, it is time to venture into the empirics of this study in order to engage in the subject matter and put forward the arguments of this contribution. First, the scope of the study becomes evident and furthermore, the trends that have been identified in the EIAs' commitments on clearing and settlement services are discussed.

III. Empirical analysis

1. Findings

Before delving into the more granular aspects of this paper, it is essential to introduce its precise scope, and its main features. To start with, as mentioned above, this study covers the EIAs, included in *Table 1,* which regulate securities' clearing and settlement services, and at least one party has made commitments.[17] Additionally, the timeframes of their conclusions are comprised in the next two columns so that the chronological trends in terms of the scheduling approaches (either through positive, negative or hybrid lists), and liberalization levels that exceed the GATS state of play can be initially drawn, before we further shed light on them in the course of the analysis. Out of the 102 EIAs, 49 use schedules of commitments (positive lists) and 48 lists of reservations (negative lists), while 3 are hybrids. The fifth column observes whether at least one party to the EIA in question enters commitments on clearing and settlement services that are more trade liberalizing than the ones it has undertaken in the multilateral trading system, under the GATS. Interestingly, 64 EIAs extend higher commitments than the ones under the GATS regime. The specifics of this table are examined *infra.*

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[16] Admittedly, it was American Express that put forward the agenda of incorporating financial services under the negotiations of the WTO. For analyses on the dynamics that led to the inclusion of financial services in the GATS, see J. A. Marchetti and P. C. Mavroidis, "The Genesis of the GATS (General Agreement on Trade in Services)," *European Journal of International Law* 22, no. 3 (August 1, 2011): 689–721. Cf. Key, Sydney J. *The Doha Round and financial services negotiations*. American Enterprise Institute, 2003.

[17] In subsection 3 i*nfra,* the 38 preferential trade agreements that either do not regulate trade in financial services or do not furnish specific set of commitments for clearing and settlement services are examined. Particular behavioral patterns and geographical trends are discerned..

Table 1: **EIAs under review**

EIA	Entry into force	WTO notification	Positive or Negative list?	EIA's commitments on clearing & settlement going beyond the GATS?
ASEAN - Australia - New Zealand	Jan. 2010	Apr. 2010	Positive list	No
ASEAN - China	Jul. 2007	Jun. 2008	Positive list	No
ASEAN - India	Jul. 2015	Aug. 2015	Positive list	No
ASEAN - Korea, Republic of	Oct. 2010	Jul. 2010	Positive list	No
Australia - Chile	Mar. 2009	Mar. 2009	Negative list	Yes
Australia - China	Dec. 2015	Jan. 2016	Negative list	Yes
Australia - New Zealand	Jan. 1989	Nov. 1995	Negative list	Yes
Brunei Darussalam - Japan	Jul. 2008	Jul. 2008	Positive list	Yes
Canada - Colombia	Aug. 2011	Oct. 2011	Negative list	Yes
Canada - Honduras	Oct. 2014	Feb. 2015	Negative list	Yes
Canada - Panama	Apr. 2013	Apr. 2013	Negative list	Yes
Canada - Peru	Aug. 2009	Jul. 2009	Negative list	Yes
Canada - Rep. of Korea	Jan. 2015	Jan. 2015	Negative list	Yes
Chile - Japan	Sep. 2007	Aug. 2007	Positive list	Yes
Chile - Thailand	Nov. 2015	Sep. 2017	Positive list	Yes
China - Georgia	Jan. 2018	Apr. 2018	Positive list	Yes
China - Korea, Republic of	Dec. 2015	Mar. 2016	Positive list	No
China - New Zealand	Oct. 2008	Apr. 2009	Positive list	No
China - Singapore	Jan. 2009	Mar. 2009	Positive list	No
Costa Rica - Colombia	Aug. 2016	Oct. 2016	Negative list	Yes
Dominican Republic - Central America - United States Free Trade Agreement (CAFTA-DR)	Mar. 2006	Mar. 2006	Negative list	Yes
EFTA - Central America (Costa Rica and Panama)	Aug. 2014	Nov. 2014	Positive list	Yes
EFTA - Colombia	Jul. 2011	Sep. 2011	Positive list	Yes
EFTA-Georgia	Sep. 2017	Aug. 2017	Positive list	Yes
EFTA - Hong Kong, China	Oct. 2012	Sep. 2012	Negative list	Yes

EFTA - Korea, Republic of	Sep. 2006	Aug. 2006	Positive list	Yes
EFTA - Mexico	Jul. 2001	Jul. 2001	Negative list	Yes
EFTA - Singapore	Jan. 2003	Jan. 2003	Positive list	No
EFTA-Ukraine	Jun. 2012	Jun. 2012	Positive list	Yes
EU - Canada	Sep. 2017	Sep. 2017	Negative list	No
EU - CARIFORUM	Dec. 2008	Oct. 2008	Positive/Negative	No
EU - Central America	Aug. 2013	Feb. 2013	Negative list	Yes
EU - Chile	Mar. 2005	Oct. 2005	Positive list	Yes
EU - Colombia and Peru	Mar. 2013	Feb. 2013	Negative list	Yes
EU - Colombia, Peru - Accession of Equador	Jan. 2017	Mar. 2017	Positive/Negative	Yes
EU - Georgia	Sep. 2014	Jul. 2014	Hybrid	No
EU - Korea, Republic of	Jul. 2011	Jul. 2011	Positive list	No
EU - Mexico	Oct. 2002	Jun. 2002	Negative list	Yes
EU - Moldova, Republic of	Sep. 2014	Jun. 2014	Hybrid	No
EU - Ukraine	Apr. 2014	Jul. 2014	Hybrid	No
Gulf Cooperation Council (GCC) - Singapore	Sep. 2013	Jun. 2015	Positive list	Yes
Hong Kong, China - Chile	Oct. 2014	Oct. 2014	Positive list	Yes
Hong Kong, China - Macao, China	Oct. 2017	Dec. 2017	Positive list	No
Hong Kong, China - New Zealand	Jan. 2011	Jan. 2011	Negative list	No
Iceland-China	Jul. 2014	Oct. 2014	Positive list	No
India - Japan	Aug. 2011	Sep. 2011	Positive list	Yes
India - Malaysia	Jul. 2011	Sep. 2011	Positive list	No
India - Singapore	Aug. 2005	May-07	Positive list	No
Japan - Australia	Jan. 2015	Jan. 2015	Negative list	Yes
Japan - Indonesia	Jul. 2008	Jun. 2008	Positive list	Yes
Japan - Malaysia	Jul. 2006	Jul. 2006	Positive list	Yes
Japan-Mexico	Apr. 2005	Mar. 2005	Negative list	No
Japan - Mongolia	Jun. 2016	Jun. 2016	Positive list	No
Japan - Peru	Mar. 2012	Feb. 2012	Negative list	Yes
Japan - Philippines	Dec. 2008	Dec. 2008	Positive list	Yes
Japan - Singapore	Nov. 2002	Nov. 2002	Positive list	No
Japan - Switzerland	Sep. 2009	Sep. 2009	Negative list	Yes
Japan - Thailand	Nov. 2007	Oct. 2007	Positive list	Yes
Japan - Viet Nam	Oct. 2009	Oct. 2009	Positive list	Yes

Jordan - Singapore	Aug. 2005	Jul. 2006	Positive list	No
Korea, Republic of - Australia	Dec. 2014	Dec. 2014	Negative list	Yes
Korea, Republic of - India	Jan. 2010	Jul. 2010	Positive list	No
Korea, Republic of - Singapore	Mar. 2006	Feb. 2006	Positive list	No
Korea, Republic of - US	Mar. 2012	Mar. 2012	Negative list	Yes
Korea, Republic of - Viet Nam	Dec. 2015	Mar. 2016	Positive list	No
Malaysia - Australia	Jan. 2013	May. 2013	Positive list	No
Mexico - Panama	Jul. 2015	Jun. 2016	Negative list	Yes
New Zealand - Chinese Taipei	Dec. 2013	Nov. 2013	Negative list	Yes
New Zealand - Malaysia	Aug. 2010	Feb. 2012	Positive list	No
New Zealand - Singapore	Jan. 2001	Sep. 2001	Positive list	No
Nicaragua - Chinese Taipei	Jan. 2008	Jul. 2009	Negative list	Yes
North American Free Trade Agreement (NAFTA)	Jan. 1994	Mar. 1995	Negative list	Yes
Pacific -Alliance	May-16	Nov. 2016	Negative list	Yes
Pakistan - China	Oct. 2009	May. 2010	Positive list	No
Pakistan - Malaysia	Jan. 2008	Feb. 2008	Positive list	No
Panama - Chinese Taipei	Jan. 2004	Jul. 2009	Negative list	Yes
Panama - Costa Rica (Panama - Central America)	Nov. 2008	Apr. 2009	Negative list	Yes
Panama - El Salvador (Panama - Central America)	Apr. 2003	Feb. 2005	Negative list	Yes
Panama - Guatemala (Panama - Central America)	Jun. 2009	Apr. 2013	Negative list	Yes
Panama - Honduras (Panama - Central America)	Jan. 2009	Dec. 2009	Negative list	Yes
Panama - Nicaragua (Panama - Central America)	Nov. 2009	Feb. 2013	Negative list	Yes
Panama-Peru	May. 2012	Apr. 2012	Negative list	Yes
Panama - Singapore	Jul. 2006	Apr. 2007	Negative list	Yes
Peru - China	Mar. 2010	Mar. 2010	Positive list	Yes

Peru - Korea, Republic of	Aug. 2011	Aug. 2011	Negative list	Yes
Peru - Mexico	Feb. 2012	Feb. 2012	Negative list	Yes
Peru - Singapore	Aug. 2009	Jul. 2009	Positive list	No
Singapore - Australia	Jul. 2003	Sep. 2003	Negative list	Yes
Singapore - Chinese Taipei	Apr. 2014	Apr. 2014	Positive list	No
Switzerland - China	Jul. 2014	Jun. 2014	Positive list	No
Thailand - Australia	Jan. 2005	Dec. 2004	Positive list	Yes
Ukraine - Montenegro	Jan. 2013	Apr. 2013	Positive list	No
US - Australia	Jan. 2005	Dec. 2004	Negative list	Yes
US - Bahrain	Aug. 2006	Sep. 2006	Negative list	Yes
US - Chile	Jan. 2004	Dec. 2003	Negative list	Yes
US - Colombia	May. 2012	May. 2012	Negative list	Yes
US - Jordan	Dec. 2001	Jan. 2002	Positive list	No
US - Morocco	Jan. 2006	Dec. 2005	Negative list	Yes
US - Oman	Jan. 2009	Jan. 2009	Negative list	No
US - Panama	Oct. 2012	Oct. 2012	Negative list	Yes
US - Peru	Feb. 2009	Feb. 2009	Negative list	Yes
US-Singapore	Jan. 2004	Dec. 2003	Negative list	No

Source: Own analysis, WTO RTA database

2. Comments on EIAs commitments: stability and competition considerations

This subsection investigates the *comments* that parties to EIAs have attached to their commitments on financial instruments' clearing and settlement services. The importance of this exercise principally lies in discovering different countries perceptions/intentions over the underlying services on the one hand, and discerning potential trends on the other. Regardless the major differences between the two financial market infrastructure services sectors, due to their CPC classification they are always examined hand in hand in all plurilateral trade agreements, same as in the GATS. Nonetheless, such categorization posits complexity to trade negotiators charged with bargaining over trade in financial services issues because it links two significantly different industries under the same roof. We contend that the silo that exists between the trade and finance teams of most countries administrations is to blame for the lack of convergence of the two disciplines. This dichotomy between trade and finance administrations is exemplified strikingly by the content of PTAs, whereby no reflections of the financial industry's evolution in terms of commitments or specific provisions are recorded. Below, *Table 2* sheds light on the comments pertinent to the subject matter of the study and later we discuss the way these comments explain the state of play of international clearing and settlement trade-flows, as at the same time we attempt to interpret the relation between trade commitments and international finance.

Table 2: **EIA comments on commitments in clearing and settlement services**

Country	EIA comments on commitments limiting liberalization in Clearing & Settlement services	In EIAs with
Singapore	*Market Access & National Treatment*: (Mode 1): Unbound, except for the provision of settlement and clearing services for financial assets which are listed on overseas exchanges only. (Mode 3): These measures are also limitations on *national treatment*. Settlement and clearing services for exchange traded securities and financial futures can only be provided by Central Depository (Pte) Limited and Singapore Exchange Derivatives Clearing Ltd (SGX-DT) respectively.Only one clearing house established under the Banking Act may provide clearing services for Singapore dollar cheques and interbank fund transfer.	AESEAN-Australia-New Zealand, AESEAN-China, AESEAN-India, AESEAN-Korea, China, EFTA, GCC, India, Japan, Jordan, Korea, New-Zealand, Panama, Peru, Chinese Taipei and US
Singapore	*Market Access Reservation*: Singapore reserves the right to adopt or maintain any measure affecting the supply of clearing and settlement services for exchange traded securities, financial futures and interbank transfers. | *National Treatment & Market Access Reservation*: Singapore reserves the right to adopt or maintain any measure in the form of subsidies or grants provided by Singapore in connection with the supply of any financial service involving what Singapore deems as systemically important financial markets infrastructure, including: (a) Exchanges; (b) Central Depositories; (c) Repositories; (d) Clearing and Settlement facilities; and (e) Market operators.	Australia
Cambodia	*Market Access*: (Mode 3): Unbound until the Government of Cambodia determines what types of entities can conduct these services, the related laws and regulation are established, and such business is authorized by the government or other relevant designated authority.	AESEAN-India and AESEAN-Korea
Jordan	*Market Access*: (Mode 3): Access restricted to the Depository Center at the Amman Bourse for securities, and to the Central Bank of Jordan for all other financial instruments.	Singapore and US
Montenegro	*Market Access*: (Mode 3): This type of services may be provided by Central Depository of Securities only	Ukraine
Bahrain	*Market Access*: (Mode 1): Unbound, except for cross-listed equities that may be cleared on exchanges offering reciprocal privileges and that meet Bahrain information requirements. (Mode 3): Unbound. Bahraini Dinar (BD) clearing must be through the Central Bank of Bahrain (CBB). BSE listed equities & securities must be cleared through the BSE.	GCC-Singapore

Saudi Arabia	*Market Access & National Treatment*: (Modes 2 and 3): Unbound for all domestic settlement and clearing services provided exclusively by Saudi Arabian Monetary Agency (SAMA) under 'j.' This also limits *national treatment*.	GCC-Singapore
Romania	*Market Access*: (Mode 1) Unbound for financial leasing, for trading of money market instruments, foreign exchange, derivative products, exchange rate and interest rate instruments, transferable securities and other negotiable instruments and financial assets, for participation in issues of all kinds of securities, for asset management and for settlement and clearing services for financial assets. Payments and money transmission services are allowed only through a resident bank.	EU-Ukraine, EU-Moldova, EU-Korea, EU-Georgia, EU-Colombia-Peru-Ecuador, EU-Colombia-Peru, EU-Central America and EU-CARIFORUM
Croatia	*Market Access*: (Mode 3) None, except for settlement and clearing services where the Central Depositary Agency (CDA) is the sole supplier in Croatia. Access to the services of the CDA will be granted to non-residents on a non-discriminatory basis.	EU-Ukraine and EU-Colombia-Peru-Ecuador
Italy	*Market Access*: (Mode 3): Clearing and settlement of securities may be conducted only by the official clearing system. A company authorised by the Bank of Italy in agreement with Consob could be entrusted with the activity of clearing, up to the final settlement of securities.	EU-Mexico
Italy	*Market Access*: (Mode 3): Clearing services including the phase of final settlement may be conducted only by entities duly authorised and supervised by the Bank of Italy in agreement with Consob.	EU-Chile
Honduras	*Market Access*: (Mode 3): Depositories for the custody, compensation and liquidation of shares in Honduras must be constituted as public corporations.	CAFTA-DR
Dominican Republic	*Market Access:* (Mode 3): The following entities must be incorporated under the laws of the Dominican Republic: (a) stock exchanges, (b) commodities exchanges, (c) brokers, (d) dealers, (e) clearing houses, (f) centralized depositories of securities, (g) investment fund managers, and (h) securities underwriters.	CAFTA-DR
Chile	*Market Access:* (Mode 3): Clearing houses for futures contracts and options on securities must be constituted in Chile as corporations for that sole purpose and with an authorisation from the SVS. They may only be constituted by stock exchanges and their stockbrokers.	Japan, Thailand, EU, Hong-Kong and Pacific Alliance

Chile	*Market Access:* (Mode 3): Clearing houses of futures, options and other contracts of similar nature that the Superintendencia de Valores y Seguros may authorize, must be established as special purpose corporations (sociedades anónimas especiales) under Chilean law. Only stock exchanges established in Chile and stock brokers who are members of those exchanges can be shareholders of clearing houses. | Clearing houses of futures and options on cattle and agricultural commodities must be established as special purpose corporations (sociedades anónimas especiales) under Chilean law.	Australia and US
Korea	*Market Access*: Only the Korea Securities Depository and the Korea Exchange may perform liquidation and settlement of securities and derivatives listed or traded on the Korea Exchange.	Australia and US

Source: Own analysis, WTO RTA database

The comments attached to the commitments on financial assets' clearing and settlement services can serve as a good indicator of how the trade negotiating teams of some states understand this sector of high relevance for the integrity of international financial systems. In addition, while identifying some patterns in the entering commitments process in EIAs, the study indicates that the existing *silo* between financial regulators and trade negotiators does not facilitate their much-needed interaction. Namely, the absence of this interaction is at odds with the liberalization of financial services and the promotion of international competition. Let us first review the prevalent trends, before we commence the discussion on their implications in the transnational regulatory framework.

First, the common denominator among Singapore, in all the EIAs it has concluded, alongside Korea, in its preferential agreements with Australia and the US, Bahrain and Saudi Arabia, in their commitments under GCC-Singapore, is that they all limit market access of clearing and settlement services for *domestically listed securities.*[18] The clear-cut rationale behind this barrier to trade is no other than financial stability considerations. Financial stability constitutes an overarching priority for regulators. Especially in the wake of the 2008 global financial crisis, States have ostensibly payed lots of attention to restructuring their regulatory architecture in ways that can potentially address perilous scenarios. The services provided by clearinghouses for OTC derivatives have been at the forefront of financial rulebooks' revisions, to mitigate the systemic risks involved in these transactions. Nonetheless, financial stability considerations are not only met in the context of financial regulatory standards and supervisory boards' list of priorities, but they are additionally encountered in the GATS Annex in Financial Services,[19] and in most of the concluded EIAs.[20] The prudential exemption embedded in trade agreements is designed to offer to regulators all the regulatory space they need to address situations of emerging financial instability, while filtering whether the corresponding measures' are fit for the purpose, without providing for unnecessary trade barriers. The next paragraph attempts to appraise to what extent the limitation met at the abovementioned EIAs' commitments can be justified under

[18] For instance, Korea in its EIA with the US phrases that: only the Korea Securities Depository and the Korea Exchange may perform liquidation and settlement of securities and derivatives listed or traded on the Korea Exchange. Or, Singapore for the provision of cross-border (mode 1) services always mandates that the services are: unbound except for the provision of settlement and clearing services for financial assets which are listed on overseas exchanges only.

[19] For thorough analysis of the role of the GATS prudential carve-out (PCO) in respect of filtering the European Union regulatory framework for clearinghouses, see above in *Chapter III.*

[20] For an empirical approach and a comprehensive analysis of the role of the PCO in EIAs, and its negotiating history in the GATS see Carlo Maria Cantore, *The Prudential Carve-Out for Financial Services: Rationale and Practice in the GATS and Preferential Trade Agreements*, Cambridge University Press, 2018.

financial stability considerations, while disregarding trade disciplines since States have all the leverage while entering their own commitments in services, following the model developed in the GATS era.

The recent crisis illustrated the interconnectedness of national financial markets, which was evidenced in the proliferation effects of securitized financial instruments in derivative markets around the world.[21] Clearing and settlement are the so-called "back-office" services which are destined to support the trading of financial instruments. The whole business of financial market infrastructure is international in nature because it mirrors the way financial market transactions occur in parallel to the operations of multinational financial institutions. Additionally, it shall be clarified that especially after the regulatory overhaul, based on the G-20 mandate, international competition for the clearing of OTC derivatives is omnipresent. However, foreign competition of clearing services is contingent upon equivalence or substituted compliance regimes,[22] which test whether the rules of other States and the supervision and enforcement of clearinghouses are on the same page as theirs. Hence, one observation that can be made at the outset about the limitation of clearing and settlement of *home listed securities* from foreign entities is that it does not encourage competition in the respective sectors. The conundrum in striking the right balance between financial stability and competition in financial services is not yet resolved,[23] and accordingly there is no established path for States to steer their national regulatory policies.

Additionally, these services sectors have been traditionally subject to monopolistic competition structures, and only within the last 20 years competition has started emerging in certain States. Another observation to be made is that the countries that decide to have their home listed securities cleared and settled within their own jurisdiction do it on the premise that the integrity of their capital markets would not be affected by possible malfunction of a foreign financial institution. This rationale seems absolutely legitimate and in line with the prudential carve-out provision embedded not only in the GATS, but also in most of the EIAs examined here. Nonetheless, financial instruments' clearing and settlement from foreign service suppliers, which currently becomes increasingly relevant does not seem to pose any systemic stability problem, as long as the institutions themselves are robust and well managed. The shift to international competition on the relevant financial market infrastructure services, such as clearing and settlement, is gradual.[24] Nonetheless, liberalization in the sector does not seem to pose any risk for the integrity of financial markets.[25]

Moreover, it is worth examining one of the reservations that Singapore listed in its EIA with Australia, which was signed and entered to force in 2003, because it brings into the spotlight the discourse between competition and stability in financial services:

> Singapore reserves the right to adopt or maintain any measure in the form of subsidies or grants provided by Singapore in connection with the supply of any financial service involving what Singapore deems as systemically important financial markets infrastructure, including: (a)

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[21] For a great narrative of the unfolding of the crisis, see Lewis, Michael. *The Big Short: Inside the Doomsday Machine*. WW Norton & Company, 2015

[22] For an analysis of the EU/US financial regimes see Yadav, Y., & Turing, D. (2016). The Extraterritorial Regulation of Clearinghouses. *Journal of Financial Regulation*, *2*(1), 21-55. For the interaction between financial regulation and WTO law, see George A. Papaconstantinou, The GATS and Financial Regulation: Time to Clear-house?, (forthcoming in 2019).

[23] See, for example, contributions in economics and law literature addressing the intense relation between financial stability and competition, Vives, Xavier. "Competition and stability in banking: The role of Regulation and Competition Policy", Princeton University Press, 2016 De Meester, Bart. *Liberalization of Trade in Banking Services: An International and European Perspective*. Cambridge University Press, 2014, respectively.

[24] For example the U.S. Intercontinental group (ICE) started operating a clearing house in Europe in 2014, see Philip Stafford, 2014 https://www.ft.com/content/09a08298-c3f6-11e3-870b-00144feabdc0.

[25] However, it should be clarified that even if liberalization, in the sense of international trade flows, does not pose any perils to financial systems, problems could potentially arise due to the way industries evolve and the way regulatory frameworks adapt (or they don't). Examples pertinent to clearing are the absence both in the U.S. and in the EU of resolution mechanisms of central counterparties (also called derivatives clearing organizations (DCOs) in the other side of the water).

Exchanges; (b) Central Depositories; (c) Repositories; (d) Clearing and Settlement facilities; and (e) Market operators.

This national treatment and market access reservation circumscribes possible subsidies measures destined to systemically important financial institutions (SIFIs). The reservation thereto seems to be prophetic in a number of ways. At first, it captures what happened in the banking sectors of Europe and the US, as a response to the 2008 crisis vicious cycle when banks had to be rescued with public money (taxpayers' contributions). These regulatory options are not *prima facie* consistent with the rules of international economic law and domestic EU competition law,[26] and thus, this reservation explicitly provides for the necessary latitude to Singaporean authorities. Furthermore, it resonates the systemic importance of financial market infrastructure, something that today more than ever is true for the functioning of clearinghouses and their international trade-flows.

In the aftermath of the 2008 crisis, no WTO law litigation arose with regards to the States' support to the banking industry. Nevertheless, one may wonder to what degree did these bailout practices, both in the EU and the U.S., distort competition in relevant markets, encourage good practices, and promote national champions. The discussion over banks' bailouts exceeds the scope of this study, but it suffices to say that the reasons that lead to this course of action involved the consideration of market failures of international financial institutions could result in negative externalities for domestic financial systems, in addition to their prominence in buying and holding sovereign debt. In the same vein, what is special about Singapore's reservation is that it caters for a treaty provision in a trade agreement that reflects on the considerations of the financial industry and the state itself, while the majority of WTO Members when concluding trade agreements tend to overlook financial services' intricacies. In particular, this reservation does not solely rely on the existence of the prudential carve-out for rainy days, but rather represents a well-thought expression of domestic protection from outside judicial scrutiny in the case of turmoil in financial market infrastructure. Thus, Singapore in this reservation sets a good precedent on meaningful considerations of financial services included in Economic Integration Agreements, regardless the possible anticompetitive effects of such provision.

Not surprisingly, it is impossible to foresee all the potential competition and stability evolutions of the financial services industry. Nonetheless states should at least strive for explaining and communicating to their trade delegations all the issues of relevance for international trade and accordingly support them in the challenging task of liberalizing these markets through international agreements. Therefore, the Singaporean reservation at issue, although potentially trade-restrictive, constitutes a great example of interaction between the trade and finance teams of its government and attempts to strike a fair balance between competition and stability in an international trade agreement.

3. EIAs not regulating trade in securities' clearing and settlement services and international finance

The rationale of the forthcoming analysis is to elucidate which are the EIAs that do not promulgate (i) the liberalization of financial services, and (ii) explore the underlying reasons behind. To address this question a review of the EIAs legal texts, and political economy considerations is required. The clearing and settlement of securities is a part of the broader realm of financial services, and that is why this study is necessary before we delve into their specific commitments undertaken for this services sector. In terms of sheer numbers, out of the *152* preferential trade agreements notified to the WTO, as of 24th May 2018, *37* either do not capture trade in financial services at all, or even if they do, their commitments are set out *in abstracto,* either in the form of future rounds of negotiations or in vague or weak commitments that do not even rise to the WTO threshold. This exercise can serve as a useful guide to

[26] For a contribution that examines the role of injecting capital into the banking sector of the EU and the law of the WTO, see B. De Meester, "The Global Financial Crisis and Government Support for Banks: What Role for the Gats?," *Journal of International Economic Law* 13, no. 1 (March 1, 2010): 27–63.

shed light on the parts of the world that do not seem to be eager proponents of financial services integration, and to provide for the explanations why, while illuminating on some observed patterns on the basis of the collected data. Additionally, trade agreements are not only about the promotion of economic interests, but also political considerations and zones of influence play a major role in their conclusion. First, *Table 3* records the 37 EIAs that are observed not to be financial services liberalization proponents with the legal justification traced in the content of these trade treaties, and then an analysis that underscores and elaborates on the most important aspects is deployed.

Table 3: **EIAs excluding financial services**

EIA	Entry into force	Provisions that exclude financial services from the scope of the EIA
Canada - Chile	05-Jul-97	Pursuant to Art. G-01 (2) and H-01 (2) (a) the Agreement does not cover trade in financial services for neither investment purposes nor cross-border supply, respectively.
Chile - China	01-Aug-10	Pursuant to Art. 2 (a) of the Supplementary Agreement on Trade in Services, financial services are not covered by the scope of the Free Trade Agreement between Chile and China.
Chile - Colombia	08-May	Pursuant to Art. 9.1 (4) and 10.1 (4) (a) the Agreement does not cover financial services for neither investment nor cross-border supply, respectively.
Chile - Costa Rica	15-Feb-02	Pursuant to Art. 11.02 (3) (d) the Agreement, financial services are not covered by the scope of the Free Trade Agreement.
Chile - El Salvador	01-Jun-02	Pursuant to Art. 11.02 (3) (d) the Agreement, financial services are not covered by the scope of the Free Trade Agreement.
Chile - Guatemala	23-Mar-10	Pursuant to Art. 11.02 (3) (d) the Agreement, financial services are not covered by the scope of the Free Trade Agreement.
Chile - Honduras	19-Jul-08	Pursuant to Art. 11.02 (3) (d) the Agreement, financial services are not covered by the scope of the Free Trade Agreement.
Chile - Mexico	01-Aug-99	Pursuant to Art. 9-02 (3) and 10-02 (3) (a) the Agreement does not cover financial services for neither investment nor cross-border supply, respectively.
Chile - Nicaragua	19-Oct	Pursuant to Art. 11.02 (3) (d) the Agreement, financial services are not covered by the scope of the Free Trade Agreement.
China - Costa Rica	01-Aug-11	Pursuant to Art. 91 (3) (e) the Agreement does not cover financial services.
China- Hong Kong, China	29-Jun-03	This Closer Economic Partnership although regulates financial services is not comprehensive and its trade disciplines are not fully-developed. When it comes to MA it is absent from the Agreement text and it is not implicitly existent in neither commercial presence (only NT & MFN) nor cross-border supply which is 3 lines about further liberalization discussions.

China - Macao, China	13-Oct-03	This Closer Economic Partnership although regulates financial services is not comprehensive and its trade disciplines are not fully-developed. When it comes to MA it is absent from the Agreement text and it is not implicitly existent in neither commercial presence (only NT & MFN) nor cross-border supply which is 3 lines about further liberalization discussions.
Colombia - Mexico	01-Jan-95	The Parties according to Art. 12-15 they shall submit their reservations to FS sectors. Has not happened last time I checked 15.II.2018.
Colombia - Northern Triangle (El Salvador, Guatemala, Honduras)	12-Nov-09	Pursuant to Art. 12.2 (5) and 13.2 (4) (a) the Agreement does not cover financial services for neither investment nor cross-border supply, respectively.
Costa Rica - Peru	01-Jun-13	Pursuant to Art. 12.1 (8) and 13.1 (8) the Agreement does not cover financial services for neither investment nor cross-border supply, respectively.
Costa Rica - Singapore	01-Jul-13	Pursuant to Art. 11 (3) and 10.2 (7) the Agreement does not cover financial services for neither investment nor cross-border supply, respectively.
EFTA- Chile	01-Dec-04	Pursuant to Art. 45 the Agreement, no commitments have been undertaken by the Parties in relation to trade in financial services.
El Salvador - Honduras - Chinese Taipei	01-Mar-08	Pursuant to Art. 10.02 (2) (a) and 11.02 (3) (d) the Agreement does not cover financial services for neither investment nor cross-border supply, respectively.
EU - Albania	01-Apr-09	Financial services are covered by the scope of the Stabilization and Association Agreement to the extent that progressive liberalization between the Parties shall occur in the coming years. MFN treatment is only explicitly extended for mode (3) of trade in services. There are no concrete MA and NT commitments, and that is reaffirmed by the absence of Schedules.
EU - Bosnia Herzegovina	01-Jun-15	Financial services are covered by the scope of the Stabilization and Association Agreement to the extent that progressive liberalization between the Parties shall occur in the coming years. MFN treatment is only explicitly extended for mode (3) of trade in services. There are no concrete MA and NT commitments, and that is reaffirmed by the absence of Schedules.

EU - Montenegro	01-May-10	Financial services are covered by the scope of the Stabilization and Association Agreement to the extent that progressive liberalization between the Parties shall occur in the coming years. MFN treatment is only explicitly extended for mode (3) of trade in services. There are no concrete MA and NT commitments, and that is reaffirmed by the absence of Schedules.
EU - Serbia	01-Sep-13	Financial services are covered by the scope of the Stabilization and Association Agreement to the extent that progressive liberalization between the Parties shall occur in the coming years. MFN treatment is only explicitly extended for mode (3) of trade in services. There are no concrete MA and NT commitments, and that is reaffirmed by the absence of Schedules.
EU - FYROM	01-Apr-04	Financial services are covered by the scope of the Stabilization and Association Agreement to the extent that progressive liberalization between the Parties shall occur in the coming years. MFN treatment is only explicitly extended for mode (3) of trade in services. There are no concrete MA and NT commitments, and that is reaffirmed by the absence of Schedules.
Guatemala - Chinese Taipei	01-Jul-06	Pursuant to Art. 10.02 (2) (a) and 11.02 (3) (d) the Agreement does not cover financial services for neither investment nor cross-border supply, respectively.
Korea, Republic of - Colombia	15-Jul-16	Pursuant to Art. 8.1 (4) and 9.1 (4) (a) the Agreement does not cover trade in financial services for neither investment purposes nor cross-border supply, respectively.
Korea, Republic of - Chile	01-Apr-04	Pursuant to Art. 10.2 (3) (a) and 11.2 (3) (a) the Agreement does not cover trade in financial services for neither investment purposes nor cross-border supply, respectively.
Korea, Republic of - New Zealand	20-Dec-15	Pursuant to Art. 10.3 (4) and 8.3 (3) (a) the Agreement does not cover trade in financial services for neither investment purposes nor cross-border supply, respectively.
Mexico - Central America	01-Sep-12	Pursuant to Art. 11.2 (3) (a) and 12.2 (2) (b) the Agreement does not cover trade in financial services for neither investment purposes nor cross-border supply, respectively.
Mexico - Uruguay	15-Jul-04	Pursuant to Art. 13-02 (4) and 10-02 (2) (a) the Agreement does not cover trade in financial services for neither investment purposes nor cross-border supply, respectively.
Panama - Chile	07-Mar-08	Pursuant to Art. 10.1 (3) (a) the Agreement does not cover financial services.
Peru - Chile	01-Mar-09	Pursuant to Art. 11.1 (4) (a) and 12.1 (3) (a) the Agreement does not cover trade in financial services for neither investment purposes nor cross-border supply, respectively.

Thailand - New Zealand	01-Jul-05	Pursuant to Article 8.1 trade in services is not captured by the scope of the current Agreement. Services trade is regulated by ASEAN - Australia - NZ.
Trans-Pacific Strategic Economic Partnership	28-May-06	Pursuant to 12.3 (2) (a) the Agreement does not cover trade in financial services.
GUAM	10-Dec-03	Pursuant to Article 17 of the FTA, trade in services liberalization is in a primary stage, and accordingly no specific commitments on financial services have been entered.
Iceland - Faroe Islands	01-Nov-06	No commitments have been entered for financial services, and it is unclear from the Treaty text whether trade in services is covered at all.
East African Community (EAC)	01-Jul-10	Neither in the Treaty for the establishment of the East African Community, nor in the Protocol for the establishment of the EAC Common Market, commitments for financial services have been entered, but rather proclamations for regulatory cooperation are set out.
Dominican Republic - Central America	04-Oct-01	Although trade and investment in financial services is covered by the content of the FTA, no country has undertaken any commitments pursuant to the provisions of the Treaty, and following the wording of Article 10.15 future liberalization shall be awaited. Due to CAFTA-DR agreement and the role of the US this liberalization has been achieved in the context of another agreement.

Source: Own analysis, WTO RTA database

The content of the Table above illustrates which are the EIAs that do not regulate trade in financial services. To start with, the common denominator among these regional trade agreements is that their participating countries, on average seem to be financial services net importers, rather than exporters. This means that since their financial industries do not have the capacity to export, and as a result generate revenues through trade in financial services, the inclusion of financial services chapters or commitments is hardly of any relevance to them. On the contrary, it can only hinder the course of the EIA negotiations. To substantiate this claim it suffices to show in the table that the vast majority of the parties to these EIAs are Latin American and Caribbean countries which, with the exception of Panama,[27] are not interested in exporting financial services, because of the nature of their economies.[28]

However, as demonstrated by Stephanou,[29] trade in financial services liberalization in EIAs is highly contingent upon the bargaining power of the parties to the agreement. The three well-known categories

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[27] Panama is an off-shore financial hub which constitutes an important financial services exporter, especially given its size.

[28] Specific studies have devoted their attention in how Latin American and Caribbean Countries have liberalized their financial services sectors, and how they have proceeded with the conclusion of EIAs. See for example, Goncalves, Marilyne Pereira, and Constantinos Stephanou. "Financial services and trade agreements in Latin America and the Caribbean: an overview." World Bank Policy Research Working Paper 4181, April 2007; Marconini M. (May 2006), "Services in Regional Agreements between Latin American and developed countries", CEPAL – Serie Comercio internacional.

[29] *Supra* pp. 16.

are, the so-called, "North-South" EIAs, which refer to the agreements that are concluded between developing and developed countries, the "South-South" EIAs, signed between developing countries, and the ones between developed countries characterized as "North-North". Unsurprisingly, when it comes to the first category (North-South), due to the existing strong and asymmetric bargaining power between the concluding parties, it is observed that the liberalization of financial services is in the top of the agenda.[30] Contrary to that, the second category (South-South), although it is of vital importance for the growth and development of the contracting states, does not seem to be concerned about capturing financial services, or liberalizing them. This pattern is predominantly evidenced in this study, and the content of *Table 3*. Namely, 21 EIAs between developing countries do not cover the trade in financial services, and Latin and Caribbean countries are the main participants.[31]

Consequently, it is held that when developing countries conclude trade agreements with one another they do not necessarily include of financial services, for the reason that it is not an area of special interest to their economies. The inclusion of financial services' sectors to their trade agreement does not contribute to their growth, while the negotiating costs would surge. It is efficient from their perspective to leave them out of their EIAs. Nonetheless, when developing states negotiate EIAs with "North" states, then they are leveraged into the inclusion of financial services in the agreements. That comes as a natural consequence, since bigger and economically robust countries are more prone to exert pressure and achieve their goals in the conclusion of EIAs. As a result, the same "South" states when they conclude EIAs with "North" states, not only they include financial services in their agreements, but they tend to offer higher commitments than the ones entered in their GATS schedule. The analysis that follows examines the "depth" of the undertaken clearing and settlement services commitments in EIAs. Before bringing our attention to this topic, it is intriguing to succinctly underline another trend observed in the absence of firm commitments on financial services in EIAs.

The analysis so far examines trade agreements as contracts that reflect the rational economic behavior of the participating states. This approach represents the general norm, but the existence of additional means and rationales that are not solely economic and according to which EIAs are designed and implemented should not be disregarded. An example of an alternative course of action is the European Union in the EIAs concluded with Western Balkans; namely, Albania, Montenegro, FYROM (Former Yugoslav Republic of Macedonia), Serbia, and Bosnia and Herzegovina.[32] These agreements regulate both trade in goods and in services, including financial services, but their primary goal is not to liberalize financial markets of Western Balkans and accrue the associated benefit of free trade, but to stabilize the region and encourage its economic growth.

Another facet of international trade is pertinent to establishing relations between states and promoting their peace and prosperity. The EU through these agreements does exactly that, and meanwhile it extends its geopolitical influence to the territories of the Western Balkans' contracting countries. These Stabilization and Association Agreements are not comprehensive in terms of the commitments inscribed for the liberalization of financial services, but that is exactly because that is not the reason behind the conclusion of these treaties. By signing these treaties the European Union seeks to distribute the benefits of trade to these states, in order for them to grow economically, while being transacting with European

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[30] This has been observed in literature, especially with regard to the EIAs that the United States and the European Union have concluded, and it is brought into the spotlight empirically in the context of clearing and settlement commitments, in subsection 5.

[31] The "South-South" EIAs that do not cover trade in financial services are the following: Chile-Colombia, Chile-Costa Rica, Chile-El Salvador, Chile-Guatemala, Chile-Honduras, Chile-Mexico, Chile-Nicaragua, Colombia-Mexico, Colombia-El Salvador-Guatemala-Honduras, Costa Rica-Peru, El Salvador-Chinese Taipei, Guatemala-Chinese Taipei, Mexico-Central America, Panama-Chile, Peru-Chile, GUAM, Iceland-Faroe Islands, Dominican Republic-Central America, East African Community (EAC), and Trans-Pacific Strategic Economic Partnership.

[32] These agreements fall under the Stabilization and Association Agreements that the EU concludes in order to promote peace, freedom, stability, and economic prosperity through trade to the region. For more information, see http://ec.europa.eu/trade/policy/countries-and-regions/regions/western-balkans/.

Union Member States. The next subsection starts addressing how commitments on financial securities' clearing and settlement services are entered in regional trade agreements. Next, the "depth" of these commitments is investigated, using the ones undertaken under the GATS as the benchmark.

4. Clearing and Settlement Commitments in EIAs: The countries that lead the way and the playbook of international dynamics for financial services

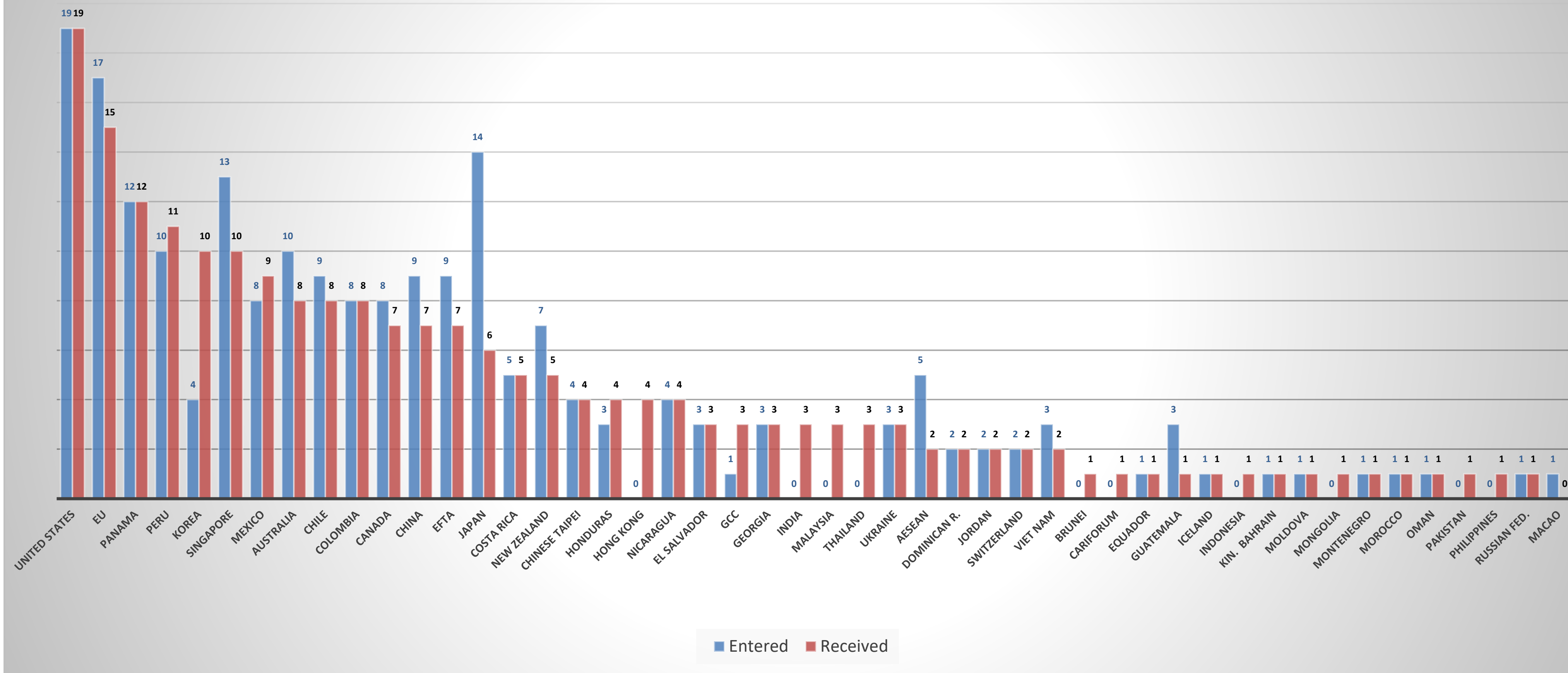
i) Aggregate number of clearing and settlement commitments in EIAs

We first investigate the mere number of clearing and settlement commitments that have been *entered* and *received* by WTO Members in the context of the unravelling effects of the exponential spike of regionalism. At the outset, this study illustrates the intentions of EIA parties to further integrate this particular financial services sectors with their trading partners. The countries that are financial services net exporters, as shown in Figure 1, are the ones that strive for higher levels of trade in financial services liberalization, through the preferential trade agreements they conclude. As a result, their trade policy agenda is oriented around the premise of acquiring commitments to that end. By receiving market access (MA), and national treatment (NT) commitments by their EIA partners, the principal challenges, in the form of qualitative and discretionary barriers to trade, that their suppliers can encounter in providing financial services in the respective markets are limited.

Next, after having set out the primary information collected in terms of clearing and settlement commitments,[33] a more detailed analysis proceeds which factors in the specific level of liberalization observed in EIAs, using as benchmark the GATS state of affairs at the multilateral trading field. Additionally, the international dynamics are put into context through a network analysis, whereby the countries with higher leverage are able to steer the behavior of smaller countries into opening their financial services markets to international competition. Geographical and chronological observations comes into play later on. First, Figure 1 below depicts in an aggregate fashion the number of commitments for securities' *clearing and settlement* services that parties to EIAs have *entered* for their trading partners, and accordingly, have *received* from them.

[33] Clearing and settlement commitments for the purpose of this figure amount to at least either a national treatment or a market access commitment of a party to an EIA for one of the 3 modes of supply (cross-border supply, consumption abroad, and commercial presence) that constitute the scope of this study.

Figure 1: **Aggregate Clearing and Settlement Commitments in EIAs**



Source: Own analysis and computations based on WTO RTA database

Figure 1 reveals that the countries that are the major financial services net exporters, such as the Members of the European Union, the United States, Singapore, Switzerland and Hong Kong among others,[34] are the ones that have the tendency (i) to provide for commitments in clearing and settlement services, since they have already very advanced financial industries, and they are not afraid of foreign competition, and accordingly, (ii) to receive commitments on this service sector from their EIA partners. The US financial industry has been traditionally "offensive" in acquiring access to its trading partners jurisdiction, while having the bargaining power to leverage its own terms in trade agreements.[35] As the figure shows, the United States comes first in the aggregate number of EIA commitments, having undertaken and received 19 commitments, followed by the European Union, having entered 17 commitments on clearing and settlement services, while having received 15. Panama, Singapore, and Australia are also high on the list. The analysis that follows in sub-section ii, investigates the specific commitments and their intrinsic characteristics.[36]

To embark on explaining figure 1, the observations have to be examined in parallel with the mere fact that economically robust countries and big regional powers, as the US and the European Union, respectively, have concluded the highest number of preferential trade agreements. Thus, since they have been members to numerous EIAs, it is not striking that these developed economies have acquired a high number of commitments on securities' clearing and settlement services. However, it should be highlighted that out of the 152 EIAs on services, only 100 comprise commitments on clearing and settlement services. Consequently, the fact that these countries have participated in many EIAs is a crucial indicator, but it is not self-evident that their trading partners shall liberalize their financial services sectors. At the same time it should not be disregarded that the parties to EIAs cannot be forced to enter commitments on financial services in their EIAs, but rather trade negotiations tend to play a tit for tat game.

To gain a better understanding on the reasons why WTO Members and parties to EIAs negotiate and conclude international trade agreements it is imperative to realize what triggers them to be in the negotiating table in the first place. One of the dominant answers is their belief in the benefits of free trade. Free trade, for starters, urges economic actors to seek and exploit their comparative advantage.[37] Subsequently, free trade opens markets and incentivizes firms to be more productive and innovative in order to acquire a better share of the expanded pie; this comes with more competition in the international

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[34] The data of International Trade Center (ITC) on exports of financial services, computed on the basis of the balance of payments (BOPs), portray that the countries that were the principal financial services exporters for 2016 were the United States (approx. 97 billion USD), the United Kingdom (approx.. 71 billion USD), Luxembourg (approx. 55 billion USD), Germany, Switzerland, Singapore, Japan, Hong Kong, Ireland, France, Canada, India, China and Australia among others. For detailed data on the imports and exports of financial services see https://www.trademap.org/tradestat/Country_SelService_TS.aspx?nvpm=1|||||||S07|1|3|1|2|2|1|2|1|.

[35] For a narrative of the liberalization of financial services and the role of the industry, see Wagner C. (Winter 1999), "The New WTO Agreement on Financial Services and Chapter 14 of NAFTA: Has Free Trade in Banking Finally Arrived?", NAFTA: Law and Business Review of the Americas.

[36] Since commitments can differ significantly from one another, *infra* the analysis specifically examines the type of commitments that have been undertaken in the realm of preferential trade agreements, and in specific measures their legal trade-liberalizing traits.

[37] The theory of the comparative advantage was conceptualized for the first time in the beginning of the nineteenth century by a British political economist, see Ricardo, David. *Principles of political economy and taxation*. G. Bell, 1891. More recently the traditional economic approach to trade agreements has been criticized due to its unrealistic hypothesis on governments' national welfare maximization. For the modern account , so called political-economy approach, that factors in the distributional consequences of trade policies, including rent-seeking, see Bagwell, Kyle, and Robert W. Staiger. 1999. An economic theory of GATT. *American Economic Review* 89: 215-48; Baldwin, Richard. 1985. The Political Economy of U.S. Import Policy. Cambridge: MIT Press; Bagwell, Kyle, and Robert W. Staiger, 2001. Reciprocity, non-discrimination and preferential trade agreements in the multilateral trading system. *European Journal of Political Economy* 17: 281-325. Cf for a comprehensive account of the economic theories behind trade see Bagwell, Kyle, and Robert W. Staiger, 2002, The Economics of the World Trading System, MIT Press, pp. 13-42.

level. In addition, to these economic rationales it is also free trade that grants peace and prosperity to the nations that play by its rules, as the European Union experiment has proven since the end of World War II. These general benefits of free trade happen to materialize in tangible commitments when it comes to trade in services agreements, either in the context of the WTO or preferential trade agreements.[38]

The general principle is that since countries care to boost their economic growth they are prone to negotiate trade agreements that are suitable for allowing them to export the goods or services sectors that they have a comparative advantage on. For countries to acquire market access to the sectors they wish, they have to offer for something in return. Most of the times they have to provide for favorable treatment to the contracting parties' areas of interest. For a EIA hypothetical, assuming that country *X* has a very strong financial services industry, that represents 13% of its GDP, while country *Y*'s economy is largely based on tourism, a win-win deal would be for the countries *X* and *Y* to negotiate a trade agreement that would open the financial services market of *Y* to the service providers of *X*, and at the same time would incentivize tourism trade-flows towards *Y*. On that premise trade negotiations are carried out, but in some occasions it is not only rationale economic thinking that dictates the terms of negotiations, but also the influence that big countries exert over smaller ones.

That has traditionally been the case for trade in financial services, since the first time they were regulated internationally under the GATS. The US financial industry lobbied for that in order to increase its share of the pie, and WTO Members followed up for their own reasons. For the purposes of this paper, it is essential to realize who are the main players in the international financial services arena, in order to develop a comprehensive analysis of the clearing and settlement services in EIAs in the first place, and to proceed by assessing how these countries conclude their EIAs, and under which terms and conditions. By now, it is clear that it is the European Union and the United States that internationally pull the strings for financial liberalization,[39] and it is this study's mission to witness how this trend is effectuated in the context of the financial service in question in EIAs. Accordingly, the analysis proceeds by measuring the "depth" of liberalization on clearing and settlement services in EIAs, and furthermore, scrutinizes the state of play of the EIAs that the United States and the European Union have concluded.

ii) Measuring the depth of clearing and settlement commitments in EIAs

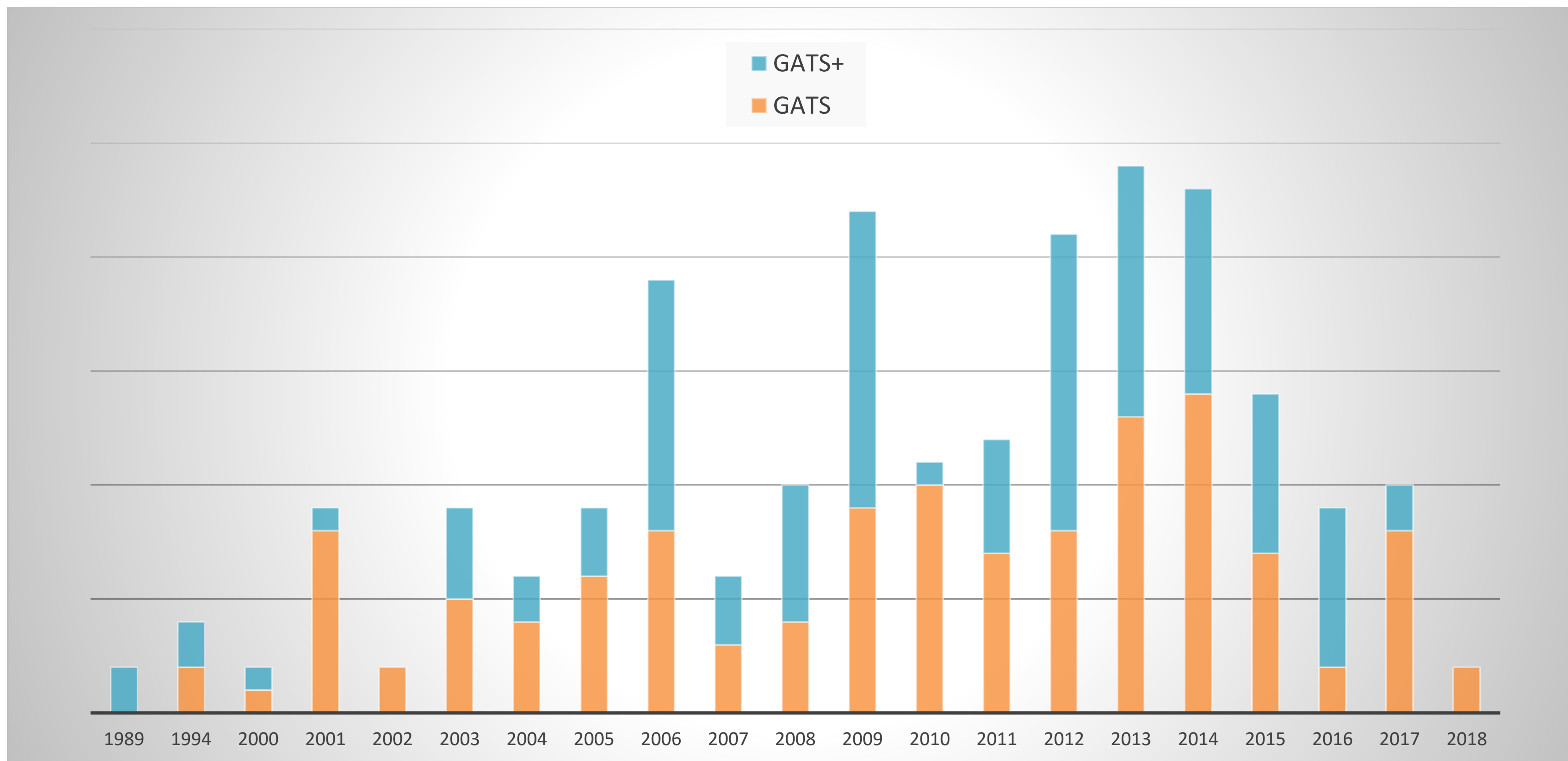
The objective of this sub-section is to elucidate on the depth of the undertaken commitments on financial securities' clearing and settlement services in regional trade agreements, and at the same time investigate the driving factors and relevant parameters that are of importance in that endeavor. At the outset, this study denotes, as described in Section II, the level of liberalization on the basis of the *status quo* of WTO Members at the multilateral trading system, namely WTO Members' GATS commitments. Specifically, (i) *GATS*, once the level of liberalization is the same as in the Members' GATS schedule, (ii) *GATS plus*, once the Member provides for commitments in addition to its GATS schedule, and (iii) *GATS*

[38] For a contribution that captures the intricacies and particularities of services trade and its negotiations see Bernard Hoekman and Aaditya Mattoo, Services trade and growth, pp. 21-58, and Juan A. Marchetti and Martin Roy, Services liberalization in the WTO and in PTAs, pp. 61-112 in Marchetti, Juan A., and Martin Roy, eds. *Opening Markets for Trade in Services: Countries and Sectors in Bilateral and WTO Negotiations*. Cambridge University Press, 2008.

[39] The difference between financial liberalization and the liberalization of financial services lies in the fact that the first constitutes the broader category that the second is a subset of. On the one hand, financial liberalization refers to the elimination of distortions in domestic financial systems which impede the efficient allocation of capital and the functioning of competition. On the other, the liberalization of financial services, as has been demonstrated in this chapter, pertains to the elimination of quantitative restrictions in the access of foreign financial services suppliers, in the form of the principle of market access, and to the elimination of discriminatory treatment, through the national treatment principle. For literature on financial liberalization see for example, Kaminsky G. and Schmukler S. (February 2003), "Short Run Pain, Long Run Gain: The Effects of Financial Liberalization", IMF Working Paper; Claessens S. and Jansen M. eds. (2000), The Internationalization of Financial Services: Issues and Lessons for Developing Countries, The World Bank and WTO; Johnston B. (July 1998), "Sequencing Capital Account Liberalizations and Financial Sector Reform", IMF Paper on Policy Analysis and Assessment 98/8.

extra, once the Member enters commitments for clearing and settlement services for the first time in EIAs. Categories (ii) and (iii) are together compounded as *GATS+*, for the sake of simplicity as the analysis of this empirical study unfolds. As a first step, figure 2 sets out the whole aggregate clearing and settlement services commitments in EIAs, which are 226 in total, charted in the *y* axe of time. This chronological illustration underscores whether the depth of liberalization (either at the same level as in the WTO "GATS" or going beyond "GATS+") evolves. The value of this graph lies in offering a holistic perspective of the way commitments in this financial services sector are entered in international trade and investment agreements over time.

Figure 2: Level of Liberalization of Clearing & Settlement Commitments in EIAs over time



Source: Own analysis and computations based on WTO RTA database

To interpret this figure accurately, it is imperative to understand first that out of the total number of commitments entered in EIAs for clearing and settlement services, half of them have adopted the GATS standard, whereas the other half has exceeded the GATS threshold.[40] What can also be discerned by the bars of the graph is that although in general there is an equilibrium between the GATS and the GATS+ commitments over the years, in 2006, 2009, 2012, and 2016 higher level of liberalization for clearing and settlement services has been effectuated in EIAs. It is extremely difficult to distinguish the determinants that drive these EIAs' *GATS+* commitments, but the analysis proceeds by tracing the route these commitments follow, in order to reveal which countries open their clearing and settlement markets at first, and to whom through the conclusion of the economic integration agreements as a second consideration.

Subsequently, the empirical analysis focuses on the *GATS+* commitments on financial securities' clearing and settlement services in international trade treaties. By exclusively examining this set of commitments it is easier to discern the factors that result in furthering the liberalization of financial services. To that end, the EIAs that liberalize clearing & settlement services beyond the GATS threshold are put into the microscope, Figures 3 and 4 set out the route that these commitments follow, and ultimately, their intrinsic characteristics are investigated below. Pursuing the objective of delineating which are the contributing factors in the liberalization of clearing and settlement services, Figures 3 and 4 underscore which are the countries that enter GATS+ commitments in EIAs, and which are the states that reap the benefits of this liberalization, respectively.

[40] To be precise, computations based on the WTO RTA database reveal that 54,42%, till the 23rd of May 2018, have used their GATS level of liberalization for financial securities' clearing and settlement services, whereas 45,58 have opted for deeper liberalization in the services sector in question. Should be reiterated that the figures here represent the commitments that provide for this services liberalization in EIAs, and not the ones that don't ("Unbound" for example), although this lack of commitment would represent the same level of liberalization as the one inscribed in some countries GATS schedules.

Figure 3: WTO Members entering GATS+ Clearing and Settlement Commitments in EIAs

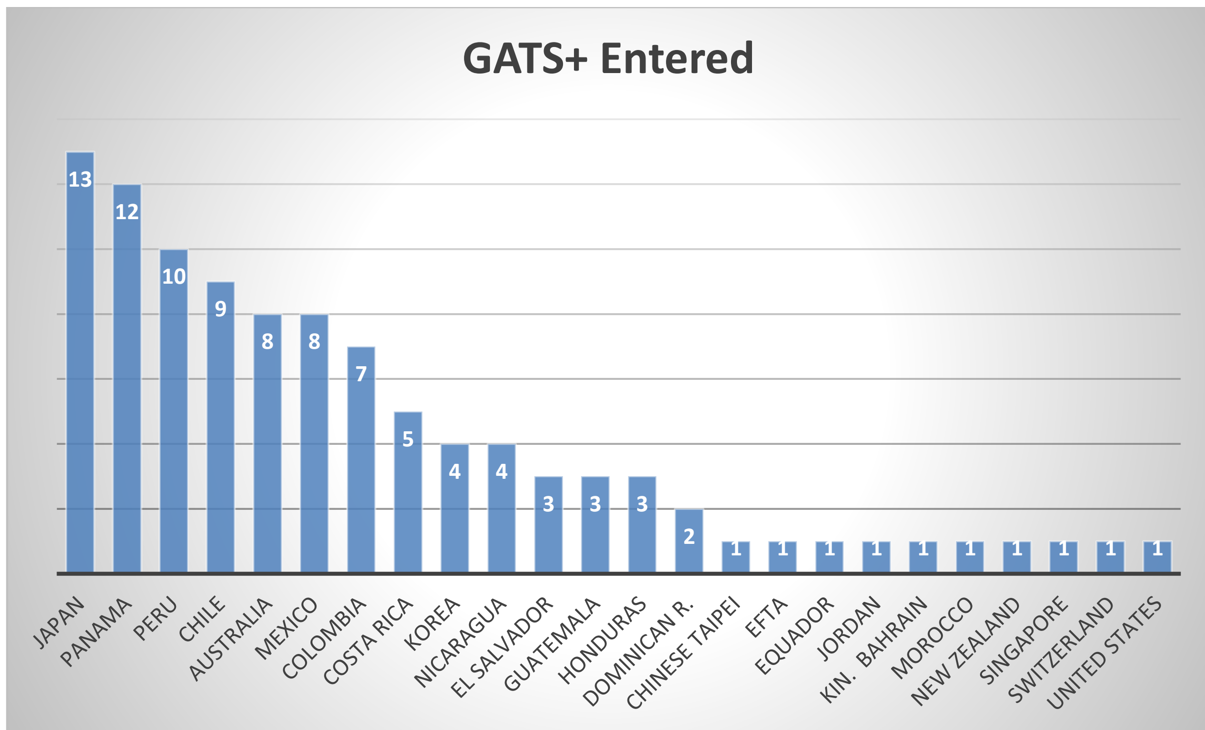
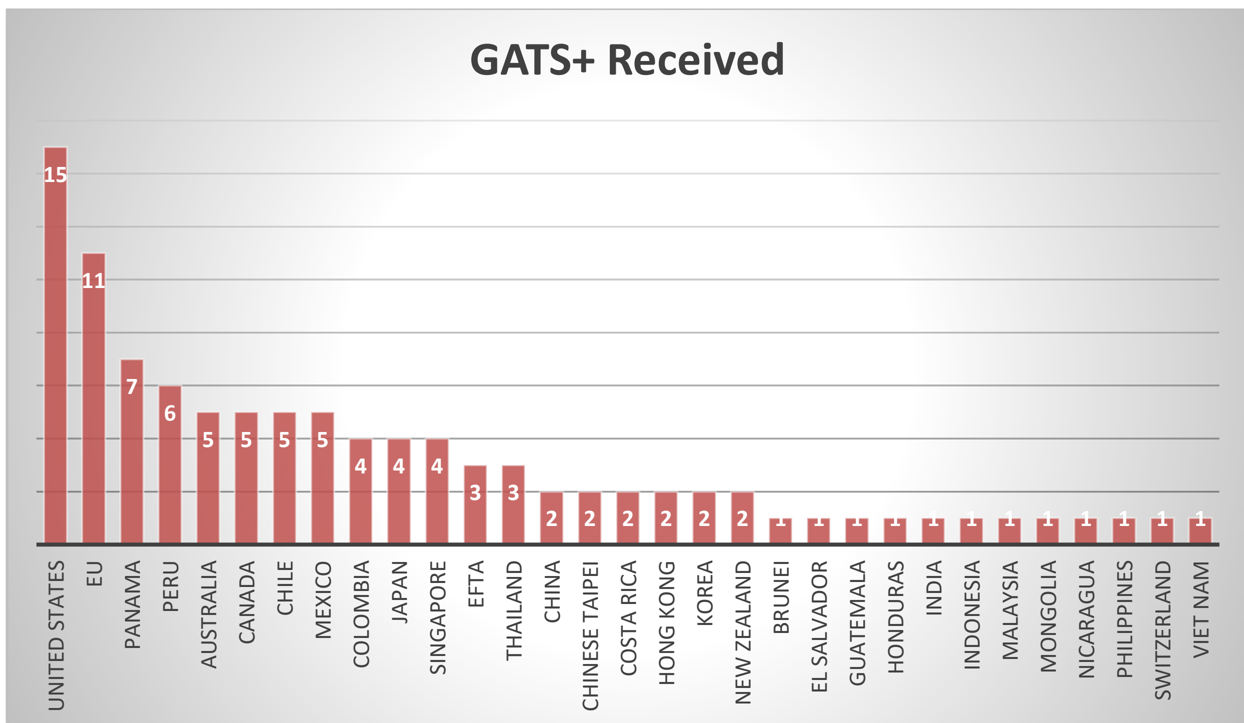


Figure 4: WTO Members receiving GATS+ Clearing and Settlement Commitments in EIAs



Source: Own analysis and computations based on WTO RTA database

Figures 3 and 4 are very intuitive because they demonstrate the state of play of the liberalization of clearing and settlement services in EIAs. Essentially these two graphs show how *GATS+* commitments on the services in question are distributed in EIAs. They explicitly underscore which countries are the net contributors, and which are the net beneficiaries. The results speak for themselves, but here we will try to contextualize these liberalization features, in order to make some sense out of this. The analysis first touches on the issues pertinent to the WTO Members that liberalize their financial services, in addition to the GATS *status quo*.

To understand what goes beyond the GATS it is essential to understand first that the legal architecture of trade in services at the WTO is inherently asymmetric. This comes as the result of the political compromise that WTO Members stroke during the Uruguay Round in order to incorporate the regulation of trade in services in the text of the Marrakesh Agreements.[41] Trade in services, unlike trade in goods which is easier to engage in for developing economies, requires high expertise and is not inclusive in terms of the capacities that states and their industries have to achieve growth through its mechanics. By default advanced economies have a comparative advantage in trading services. To compensate for that and for the developing states to be persuaded in a consensus at the multilateral trading system, the provisions under the title "Commitments" had to be introduced. These *commitments* allow to WTO Members to provide for (progressive) liberalization to their services sectors, through market access and national treatment principally, as they please. Consequently, referring to the GATS asymmetric architecture means that each WTO Member has defined its own depth of liberalization in its GATS Schedule of commitments, and as a result there is no homogeneity. This context is furnished to accentuate that not all countries share the same starting point in liberalizing their services' sectors in the GATS, and financial services are not an exception to the rule.

When it comes to EIAs, the same principle applies with the difference that the liberalization attained under these agreements does not extend to all WTO Members, but only to the ones that are parties to the specific preferential trade agreement, which is in accordance with the GATS Article V.[42] The rationale of this provision is to encourage further liberalization of services, even this integration extends its benefits only to parts of the WTO system, assuming the conditions of the GATS Article V are fulfilled. For the purposes of this study, shall be stated that the existence of the GATS immense discretion in scheduling commitments has produced divergences in the liberalization of services among WTO Members. As a result, some countries have way more ground to cover to reach the levels of other countries. Additionally, financial services is a sector that traditionally protectionist policies are attached to, and clearing and settlement services do not deviate from this pattern.

Not surprisingly, the vast majority of WTO Members that go deeper than their GATS commitments on securities' clearing and settlement services while concluding EIAs are developing states, such as Panama, Peru, Chile, Colombia, Costa Rica etc. This can partially be explained by the fact, that these states have lots of room to cover to liberalize their financial market infrastructure to the levels of developed WTO Members. This divergence on the liberalization of financial services can be easily exemplified by taking a look at the 20 states that have adopted the Understanding on the Commitments on Financial Services in contrast to the remaining WTO Members. In addition to that, some developed states as well opt for further opening their clearing markets, such as Japan, Australia, and Korea. To fully capture the dynamics that drive these states to the underlying policy decisions in EIAs, it is essential to investigate graphs 3 and 4 *in tandem,* in order to see which are the countries that are on the other side of the table, and accordingly, potentially reap the benefits of such liberalization effects.

Figure 4 very clearly illustrates that it is the *European Union* and the *United States* that secure better liberalization conditions for clearing and settlement services through the conclusion of EIAs, in terms

41 See Mavroidis & Marchetti above *note 11*.

42 GATS Article V, under the title "Economic Integration", provides for the legal basis on which regional trade agreements on services are concluded.

of market access and national treatment commitments. This is a ramification of their asymmetric bargaining power and strong interest in exporting financial services. As a result, their EIAs reflect these two contributing factors, and this is bluntly portrayed in the *GATS+* commitments the EU and the US receive for the financial services sector in question. The next subsection explicitly oversees which are the WTO Members that offer these GATS+ commitments to the EU and the US to complete the picture of the regulation of international financial instruments' clearing and settlement trade flows.

iii) The roadmap of GATS+ clearing and settlement commitments for the EU and the US in EIAs

This subsection underlines which are the countries that offer GATS+ commitments to the EU and the US through the regional trade agreements they have concluded. As figures 5 and 6 show, the countries that inscribe GATS+ commitments in their schedules of commitments or lists of reservations with the US and the EU are highly similar with Latin American and Caribbean countries being the common denominator for the EIAs that both states have concluded.

Figure 5: EIAs with the EU

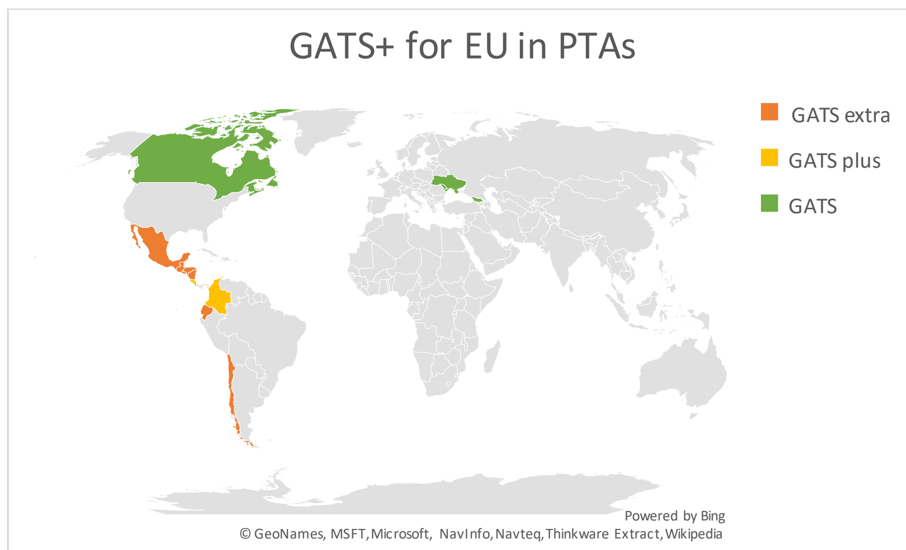
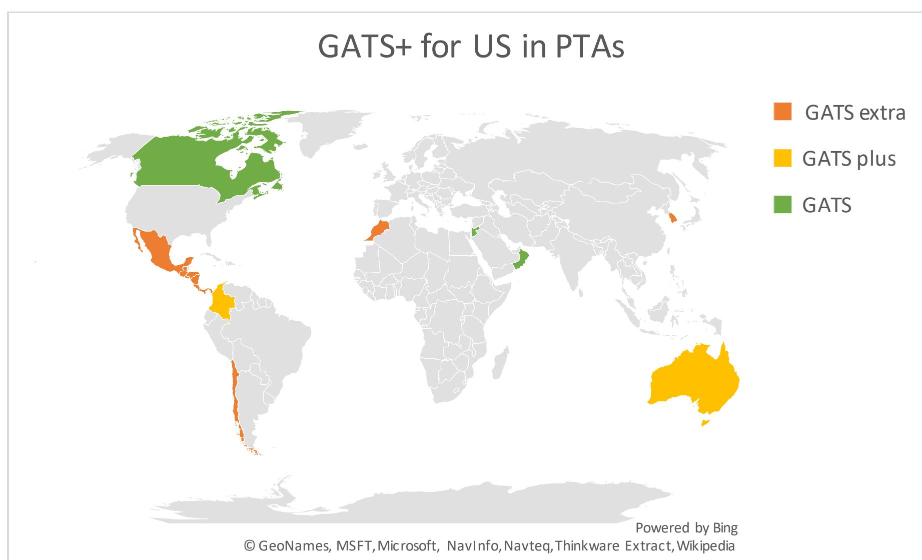


Figure 6: EIAs with the US



These graphs show how securities' clearing and settlement services are regulated and liberalized in EIAs. Nonetheless, the liberalization of financial services is not only contingent on commitments undertaken under either the WTO or regional trade agreements, but most importantly it is dependent on the regulation of financial services by WTO Members. In a perfect universe, trade furnishes the norms and principles, such as non-discrimination and transparency, on the basis of which regulatory standards are constructed, assuming that market access and national treatment commitments have been inscribed for particular services sectors. Allowances must be made that trade sets out the general liberalizing patterns for services sectors, but it is the regulation of these sectors that prescribes the details and the specific conditions that domestic and foreign service providers have to comply with to ply their services. Thus, the trade of financial services is such a delicate field of law because the regulation of the services in question has to be calibrated with the international commitments of states under the GATS and other regional trade agreements. The next section ventures into an examination of the general patterns of the regulation of clearinghouses in the aftermath of the 2007-2009 global financial crisis, and serves as a utility to compass around the interaction between financial regulatory standards and regionalism.

IV. Financial Market Infrastructure Regulation and the States' silos in negotiating EIAs

This section aims to illustrate how the regulation of clearing services after 2010 has imminently changed the industry and has provided for the international standard on the basis of which the international clearing flows are effectuated, and to reveal that EIAs that have been concluded after 2010 do not seem to either mirror or adapt their scope to the twists and turns that industry has followed. Yet, international trade law and financial regulation are disparate legal disciplines, with different mechanics and points of reference. However, since they both prescribe legal norms for the regulation of the financial services' sector in question, one would reasonably expect that synergies exist between the two legal orders in order to promulgate a coherent set of rules, rather than having two systems that do not interconnect at all. The analysis underscores an absence of coordination between the trade and finance teams of WTO Members' administration, and wonders to what degree this deficiency can be mitigated.

In response to the G20 accord, States started heavily regulating the clearing of OTC derivatives around the world. Prudential regulations of clearinghouses seek to mitigate the risks associated to the trading of derivatives that can have a seismic impact from a financial stability perspective. To that end, financial rulebooks around the world have been very comprehensive in regulating the industry and all its specific characteristics. One of the aspects of these regulatory standards pertains to how clearinghouses from foreign jurisdictions can provide their services in domestic markets, to domestic entities or even having a substantial effect on them. These set of rules that permit foreign clearinghouses market access fall in general under the category of regulation called "third-country equivalence" or "substituted compliance" in the EU and the US, respectively.[43] Therefore, for foreign clearinghouses to offer their services in other jurisdictions the key is to comply with the abovementioned regimes.

Nonetheless, the regulation of international trade either under the WTO or under preferential trade agreements provides for its own set of rules for financial services, either in the form of market access or national treatment commitments, or in the form of recognition provisions. Due to the intricacies of financial regulation and the existing silo between trade and finance administrations, trade delegations at the WTO and the EIA negotiating teams do not seem to take account of the challenges ahead relevant to the regulation of financial market infrastructure. This claim is substantiated by the fact that *the regulatory change on the role of clearinghouses globally is not reflected in anyway in the content of EIAs*. To buttress this view it suffices to say that when a financial sector is subjected to major shifts of that scale, as the case of clearinghouses, which heavily impact on the terms-of-trade, it is only for international economic law to react accordingly in order to adjust to new realities. Therefore, by closely

[43] For an analysis of the European regulatory framework and the examination of its consistency under WTO law see George A. Papaconstantinou, *note 21*.

following the evolution of financial services, international economic law should utilize its toolkit so that not only it keeps up with the financial industry's progress, but also facilitates the integration of these services through encouraging international trade-flows. Nevertheless, this approach does not side with reality.

The drastic swift on the regulation of the financial industry described above is not captured by regionalism. Namely, neither the lists of reservations nor the schedules of commitments of the parties to EIAs, concluded after 2009, keep track with the changes. Alternatively, EIA parties by just inscribing next to the clearing and settlement category of their commitments that the supply of the services at issue hinges on specific provisions of their financial rulebooks, that translate the substituted compliance/third-country equivalence frameworks, would have made a difference because at least the content of the trade agreement would provide for legal certainty with regards to the treatment of the financial sectors in question and would be consistent with the legal practices promulgated by states financial regulatory/supervisory authorities. However, this is emphatically not the case in EIAs, as evidenced by this study, and interestingly there is no mention of OTC derivatives as such in the content of preferential trade agreements in general, no matter their importance for many financial services sectors, and for securities' clearing and settlement *in concreto*, which are vested with harnessing it. Thus, the absence of coordination evidenced in this study brings into the spotlight the existent silos in WTO Members' administrations between finance and trade.

An additional dimension that trade delegations seem to disregard relates to the fact that financial services industries develop rapidly due to either the impetus of technology,[44] or the role of regulation in financial markets. Thus, it is imperative to device a mechanism in preferential trade agreements in order to revise the inscribed commitments or lists of reservations, on the basis of impact assessments that calibrate the existing legal texts to the new realities. Allowances should be made in respect of the specific means regarding the procedures of these revisions so that abusive practices are avoided. Such a scheme would be doubtful under the WTO, since negotiation rounds have stagnated for a long period. However, under EIAs one would expect that there is much room for improvement in that score because the parties to international trade agreements are more flexible and on average they are homogeneous.

Ultimately, this contribution suggests that assuming that there were synergies between the trade and finance teams of WTO Members, the associated benefits for the trade of financial services would be huge. First, because financial rulebooks would have transparent standards that can only promote trade openness and liberalization. Second, because the content of EIAs would be better informed about reflecting financial services sectors legal state of play, and as a result ameliorate the plurilateral trading relations and deepening their markets. Third, because trade and financial regulation need to work in parallel in order to tame financial innovation and to achieve financial stability.

V. Concluding Remarks

This paper for the first time comprehensively evaluates in an empirical analysis the depth of liberalization attained in the plurilateral trading system for the financial services of securities' *clearing and settlement* in the aftermath of the global financial crisis. This endeavor is driven by the need for examining the regulation of international trade and the one of financial services *in parallel* in order to attain legal certainty for the provision of the services in question, and to avoid situations under which the regulation of the one discipline does not capture the legal issues promulgated by the other, as it is the case argued by this study.

[44] Technological progress tends to challenge the traditional forms of banking and finance and accordingly, change the financial industry as we know it. Innovations such as artificial intelligence or blockchain technologies nowadays spearhead the emergence of maverick companies and as a result many traditional financial services providers have started facing more competition. See for example Martin Arnold, Financial Times https://www.ft.com/content/2f6f5ba4-dc97-11e6-86ac-f253db7791c6.

The findings of this paper indicate that the integration of international financial market infrastructure services in economic integration agreements goes significantly beyond the threshold achieved in the WTO system by the GATS schedules of commitments. More importantly, it is observed that the beneficiaries of financial services liberalization traced in the clearing and settlement services of securities are principally the European Union and the United States. The main explanations for this trend put forward by this study are pertinent to the 2 States' bargaining power alongside with their strong interest in opening third countries' markets to their own financial service providers.

Ultimately, we evaluate how the regulation of financial market infrastructure, and in particular the one on clearinghouses crafted after 2010 comes to grips with the way preferential trade agreements are structured and deal with the services in question. We find that the silos in WTO Members' administrations between trade and finance teams are striking and that is substantiated by the mere fact that there is no indication in the content of EIAs that something has changed in terms of this financial services sector since 2009, even for the trade agreements concluded thereafter. This is problematic mainly for two reasons: first, because international trade law does not reflect and factor in the legal realities and regulatory standards, which represent the most important hurdles to services trade, which result in legal uncertainties; second, because both legal disciplines set out the rules for the operation of financial services it is quintessential to update EIAs in accordance with the mandates of financial regulation and not relying excessively on provision such as the prudential carve-out, so that further integration of financial services is attained. Finally, study argues that in order to remedy the mismatch between the evolving regulation of financial services and the static content of international economic agreements a frequent updating process of the agreements is required.

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