# DEVELOPING COUNTRIES AND PREFERENTIAL SERVICES TRADE

CHARLOTTE SIEBER-GASSER



## CONTENTS

List of Figures page xiii List of Tables xiv Acknowledgements xv List of Abbreviations xvii Table of Agreements xx Table of Cases xxix

#### Foundations

1 Special and Differential Treatment in the WTO 3

4

37

I Developing Countries in the WTO

1

- II Least-Developed Countries in the WTO 13
- III Special and Differential Treatment 17
- IV In Summary 24

## 2 The Rationale for South-South Services Trade I Trade in Services 29

27

- II Development Effect of Services Trade
- III Controversies of Preferential Services Trade 40

#### 3 The Quest of this Study 44

- I South-South in this Study 45
- II Gap in Literature and Why Understanding South-South Services Trade Matters 50
- III Methodology 52
- IV Mapping Preferential Trade Agreements in Services 54
- V Structure of the Study 57

## PART I Preferential Services Trade 61

- History and Geography of Preferential Services Trade
  I Influence of Early PTAs on GATS
  67
- Stock-taking of Preferential Services Trade Agreements 73
  I Lack of Notifications to the WTO 73

x	CONTENTS
3	The Current Level of Liberalisation80I Low Level of Liberalisation80
4	The Special Case of South-South PreferentialServices Trade86IThe History of South-South PTAs89IIThe Geography of South-South PTAs104
	PART II Legal Regime for Preferential Services Trade 107
1	Historical Background of Preferentialism in Services Tradeand its Regulation110I Regulatory Flexibilities for Preferential Trade117II Most-Favoured Nation Treatment (GATS Art. II)120
2	GATS Art. V128IPositioning GATS Art. V in International Economic Law129IIChapeau of GATS Art. V134IIIQuantitative Requirements: GATS Art. V:1 lit. a and lit. b135IVQualitative Requirements: GATS Art. V:1 lit. b137VRelated Provision: GATT Art. XXIV155
3	Regulatory Flexibilities in the GATS: Special and Differential Treatment 160
4	Compliance with GATS Worldwide 163
5	Loopholes in the GATS: Problems in Practice 165 I Language of GATS Art. V 167 II Missing Case Law 169
6	Innovation in South-South Agreements? 173 I Sectors of Interest 175 II Modes of Supply 188
7	In Summary 192
	PART III Legal Regime for South-South Preferential Services Trade 195
	The Legal Scope of Flexibilities for South-South Preferential Services Trade 201 I Preamble of the GATS 203 II Preferential Trade in Services: GATS Art. V 206 III Flexibilities on the Basis of the Positive List Approach 213

. .

.

1

• 7

	IV Flexibilities Embedded in Special and Differential Treatment
	V Waiver 218
	VI Enabling Clause 220
2	Legal Arguments for a Large Scope of Flexibilities in the GATS 224
	I No Additional Flexibility: The Narrow Interpretation 226
	II Flexibility in Number of Sectors and Level of Liberalisation: The Medium Interpretation 227
	III Sectorial Agreements: Broad Interpretation 228
3	New Approach to a Better Use of the Scope of
	Flexibilities 231
	I Depth of Regulation 233
	II GATS-Plus, GATS-Extra and GATS-Minus 239
	III Sectors of Interest 244
	IV Modes of Supply 248
	V Compliance with GATS 252
	VI Implementation of GATS Art. V Requirements 260
	VII Implications for the Scope of GATS Art. V 262
	VIII Lessons to be Learned 264
	IX Innovation in South-South Agreements 266
4	Systemic Considerations 271
	I Legal Uncertainty 273
	II Political and Economic Effect 275
	III Number of Notifications 277
	IV Level of Liberalisation 277
5	In Summary 281
	Conclusion 285
1	Lessons for the WTO 289
2	Lessons for the Architecture of International
	Economic Law 291
3	Critical Issues for Future Research 293
	Bibliography 294 Index 317

¢

~

xi

216