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What role for international cooperation on services trade policy?

Trade in services continues to evolve. Technology and regulatory reforms are driving a fundamental transformation, creating new demand while simultaneously helping to reduce trade costs and opening further opportunities to trade services. Under the impetus of global value chains, demographic trends, rising per capita incomes in emerging markets and environmental concerns, demand for foreign-supplied services is on the rise. The evolving avenues, actors and composition of services trade increase its potential to contribute to inclusive economic growth and development, but also present a number of challenges that need to be addressed to fulfil this potential.



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Some key facts and findings

- Policy barriers to trade in services are more complex than in goods trade, as they are essentially regulatory in nature.
- Over the past decades, most countries have opened up their services markets to competition. However, undertaking such reforms unilaterally does not allow economies to reap all potential benefits.
- Economies have cooperated on lowering services trade barriers and on regulatory measures, both in the WTO and in regional trade agreements. Yet, thus far, such collaboration has not been fully exploited.
- Using trade agreements to drive services trade reforms has proven difficult, possibly because of the pervasive role that regulation plays in services markets.
- Accompanying market opening negotiations with greater international cooperation focused on domestic regulatory measures may be one way to harness the potential of services trade. Technical assistance and capacity building would be crucial in this regard.

1. Introduction

Over the past three to four decades, most countries around the world have embarked on far-reaching reforms targeted at increasing competition in their service markets. Many of these initiatives were undertaken by governments in an autonomous manner, generally motivated by expectations of significant welfare benefits, particularly in terms of overall economic competitiveness. In the meantime, services began to account for an ever-increasing share of GDP, at first in industrialized countries and later in developing countries as well.

This transformation proved a driving force behind increased international cooperation in the services arena, which culminated, in 1995, in the entry into force of the General Agreement on Trade in Services (GATS). By adopting a wide definition of trade, the GATS captures virtually all possible ways to supply services internationally and creates a rule-based, transparent and predictable environment in which services firms can operate. It also offers WTO members the possibility of locking in existing trading conditions, thus protecting market participants against economically costly policy reversals, and provides a locus for monitoring, benchmarking and sharing knowledge on services trade policy.

Nevertheless, in certain sectors and areas, trade barriers remain considerable and have proven difficult, if not impossible, to remove based on purely domestic processes. This suggests the limits of what governments can achieve autonomously in terms of opening services markets. It also points to the constraints on the benefits of reforming services unilaterally, in terms of a greater latitude for policy reversals and the unintended trade costs that may arise from regulation being set in isolation. Such drawbacks may be particularly felt nowadays, as governments begin to grapple with the implications of rapid and far-reaching changes induced by digital technologies.

Greater international cooperation on services trade policy would offer governments the possibility to secure more fully both their unilateral reforms and those of their trading partners by binding them in trade agreements, thereby guaranteeing that global services markets remain open. Although this is one of the roles the GATS was designed to fulfil, in light of the fact that no further services negotiations have been concluded in the WTO since the late 1990s, over the past 20 years or so most services trade-openings have been bound in regional trade agreements (RTAs), rather than in the WTO.

Against the backdrop of rapidly evolving trade patterns and the associated opportunities these offer, it may nevertheless come as a surprise that, apart from deeper integration efforts such as in the European Union, both multilateral and regional services trade agreements have locked in unilateral reforms to a degree, but have not driven entirely new trade-opening. One likely explanation for this state of affairs is the pervasive role that regulation plays in services markets and the essential role that well-designed regulatory policies and adequate domestic capacity play in delivering welfare-enhancing trade-opening.

To explore these issues, this section is divided into three parts. Section E.2 briefly discusses the motivations for international cooperation in services policy-making. It outlines the changing landscape of trade in services, the rationale for and design of governments' interventions in services markets, and the reasons why governments choose to collaborate on services trade policy. Section E.3 examines how countries engage in international cooperation in the services sphere, with regard to services trade barriers and domestic regulatory measures.¹ Starting with the barriers, it describes how cooperation has evolved and is evolving, both in the WTO and in RTAs; it then moves on to a similar analysis for collaboration regarding domestic regulatory measures. It also provides an overview of the regulatory cooperation activities of other international organizations that are most relevant to services trade. Section E.4 considers the prospects for further collaboration on services trade policy and Section E.5 offers concluding observations.

One message that emerges from the discussion is that enhanced international cooperation will be essential to respond adequately to the opportunities and challenges generated by the many factors shaping world services trade.

2. Why governments cooperate on services trade policy

(a) The landscape of services trade is evolving and transforming

Under the impetus of diverse forces, trade in services is being transformed. Existing demand for internationally supplied services is growing, new demand is emerging, and more avenues are being unlocked to supply services internationally.

Thanks to technology, shifts are taking place in means of delivery, i.e. the increased ease of

cross-border trade in services, accompanied by a reduction on what was once the essential importance of commercial presence. Shifts in the composition of trade are observed in higher growth rates for ICT and ICT-enabled services compared to other services. Moreover, contrary to popular perceptions, the data presented in this report show that developing countries are not being left out of these transformations. Rather, they are becoming more integrated into global supply chains and are contributing more to value-addition. While large global internet-based companies make the headlines, micro, small and medium-sized enterprises (MSMEs) in developing countries are successfully exporting a wide range of business services online, collaborating with foreign partners to supply software for new technologies, and in some cases spearheading technological innovation adapted to the needs of developing country realities. The increasing feasibility and importance of cross-border supply brings with it challenges for governments and for international trade. One such challenge is the risk of marginalization of those developing economies that do not manage to gain access to new technologies. It is precisely these trends that make collaboration and cooperation across borders significantly more important and necessary than in the past.

Technological advancements, such as those reviewed in previous sections, are affecting regulatory frameworks and creating significant dilemmas for regulators in their quest to find a balance between fostering, innovation, protecting consumers and other public policy objectives, and keeping markets open. Technology may challenge traditional regulatory models because regulations are not easily changed and adapted either within or across national jurisdictions.

As explained in Eggers et al. (2018), the assumption that regulations can be crafted slowly and then remain in place, unchanged, for long periods of time, has been called into question. As new business models emerge and modes of services supply shift, government agencies must respond by creating or modifying regulations, enforcing them, and communicating them to the public at a much faster pace than before. Existing regulatory structures are often slow to adapt to changing societal and economic circumstances, and regulatory agencies tend to be risk-averse.

While the policy cycle may take several years, digitally-enabled service industries can emerge and grow very quickly. New companies may become multinationals in much less than a decade. Airbnb, for

example, was founded in 2008 and has grown into a global platform with hosts across more than 191 economies and 81,000 cities (Airbnb, 2019). Uber is another case in point: founded in 2009, 10 years later it has an estimated 110 million users worldwide and is present in 63 economies and more than 700 cities.² Yet another example is M-PESA, launched in 2007 and processing 1,200 transactions per second by 2018.

Technology also allows services and service suppliers to cross traditional industry boundaries. Telecommunications companies, for example, now supply payment and money transmission services (e.g. Vodafone through M-PESA and OrangeMoney), as well as more traditional banking products such as savings accounts and loans (OrangeBank). Uber acts as an intermediary not only for passenger transport services but also food delivery. Alibaba has evolved from being an online distributor to also providing financial services. These drastic and fast-paced changes render the domestic coordination of regulatory agencies unavoidable. However, many national regulatory systems are complex and fragmented, with various responsible agencies exercising overlapping authority.

Traditionally, regulators have adopted a “regulation-first” approach, i.e. regulation had to be in place before services could start to be supplied. Even within that framework, the regulation-making process has increasingly allowed for dialogue with stakeholders (e.g. industry and consumers), not only domestically but also internationally. Regulators, therefore, would first conceptualize new rules and regulations in response to market developments, then spend months or years drafting rules and sharing those drafts with stakeholders for public comment. Finally, after examining those comments – a task that could be time and resource-consuming depending on the number and extent of the comments – the regulation would be finalized.

However, when confronted with the rapid pace of change imposed by technology, this approach has proved problematic. First, for all the insights they can gain by interacting with the private sector, regulators often cannot fully anticipate how the market will react to new regulations; and second, regulations may not be reconsidered once in effect. For these reasons, regulators have started to move towards more adaptive approaches to regulation. Innovation offices and “regulatory sandboxes” are examples of the approaches adopted, as illustrated in Box E.1.

Box E.1: Fintech, regulation and international cooperation: the case of innovation offices and regulatory sandboxes

Technology-enabled innovation in financial services (so-called Fintech) has grown rapidly in the past decade, allowing for the emergence of such services as mobile payments and peer-to-peer lending. The rise of Fintech presents many challenges due to regulators' limited technological expertise (which makes it difficult to assess innovative business models and practices, and their impact), the existence of financial innovators which are not traditional financial services providers, the need to balance innovation and financial stability, limited human and financial resources, and the pressure from incumbent financial services providers to maintain the status quo.

An increasing number of regulators in developed, developing and least-developed economies are responding to such challenges by introducing innovative regulatory approaches, including so-called innovation offices and regulatory sandboxes.

Innovation offices are often the first approach to improve regulator-innovator dialogue and are a good first option for resource-constrained regulators in emerging and developing economies, since they are easier to implement and operate than other regulatory initiatives. They can further evolve or be complemented by other approaches, such as regulatory sandboxes (see below). Innovation offices may serve not only to educate innovators on the regulatory environment in which they operate but also to improve the regulator's understanding of Fintech, thus supporting appropriate regulatory responses. More than 30 jurisdictions around the world are currently operating this type of office. Innovation offices may also facilitate international cooperation on regulatory matters through bilateral cooperation agreements. A case in point is the UK Financial Conduct Authority (FCA)'s Innovate, which was established in 2014 and has signed cooperation agreements with counterparts in Australia, Canada, China, Hong Kong (China), Japan, the Republic of Korea, Singapore and the United States. These agreements promote information-sharing on emerging trends in financial innovation between authorities and facilitate referrals of innovators from one market to another, thus reducing regulatory barriers to entry in foreign markets.

A regulatory sandbox is a formal programme, typically summarized in writing and published, that allows live and time-bound testing of innovations (e.g. new financial products, technologies, business models) with actual customers, subject to regulators' oversight. This testing takes place at the edge or even outside of the existing regulatory frameworks, allowing regulators to gain a better understanding of Fintech and to decide whether further regulatory action is necessary. A successful test may result in several outcomes, including authorization of the innovation, changes in regulation, or a cease-and-desist order. A common feature of regulatory sandboxes, which may be resource-intensive, is that they facilitate dialogue between market participants and regulators, allowing for better informed regulation and helping to strike the right balance between innovation and risk.

The first regulatory sandbox became operational in 2016 in the United Kingdom. At the beginning of 2019, there were almost 30 jurisdictions actively implementing them. The sandbox concept is being explored to promote cross-border regulatory cooperation and enable innovators to gain economies of scale more rapidly on a regional or global basis. Multi-jurisdictional sandboxes may therefore facilitate cross-border expansion through shared testing programmes and reduce the potential for regulatory arbitrage across individual sandboxes. Two initiatives for multi-jurisdictional sandboxes are currently under way: the Global Financial Innovation Network (GFIN), proposed in 2018 by the UK FCA, together with 11 financial regulators around the world, and the API Exchange (APIX), launched by the Association of Southeast Asian Nations (ASEAN) Financial Innovation Network (AFIN) (UNSGSA and CCAF, 2019).

(b) Market failures – and private interests – drive governments' intervention in services

The services economy has undergone a major transformation over the past three to four decades. It has evolved from a model where governments were solely and uniquely in charge of supplying many infrastructural and social services to one where these

services are provided also, or predominantly, by private actors in competition with each other.

Dornbusch (1992) notes that widespread disappointment with the results achieved by market restrictions and the poor performance of services activities led many economies in the 1980s and 1990s to introduce ambitious domestic reform programmes

aimed at boosting services efficiencies. Starting in the early 1980s, all Organisation for Economic Co-operation and Development (OECD) countries implemented, to differing degrees, pro-competitive structural reform programmes. They were prompted, for example, by the efficiency losses resulting from reduced output levels and high prices induced by restricted entry, a reassessment of whether, and how, to regulate natural monopolies in light of technological advances, and the need for economies to adjust to an increased degree of international competition in many service industries (Hoj et al., 1995). Countries also undertook services reform, particularly in financial and telecommunications services, within the broader framework of “Structural Adjustment Programs” implemented to qualify for World Bank and International Monetary Fund loans and make debt repayments (Busari, 2010).

In some instances, services markets were initially unlocked only for domestic firms, but they were often progressively and steadily opened up also to foreign suppliers. These reform initiatives, which were undertaken virtually universally, albeit at varying speeds and to different extents, in essence opened up trade via commercial presence in many infrastructural and producer services. They also altered the role that governments play, from that of primary supplier to that of regulator of competitive markets. Furthermore, even in those services sectors where competitive pressures had always existed, technological developments have increased the need for, and intensity of, regulation. Contrary to general perceptions about deregulation, therefore, the services transformation required new and adapted government regulation.

Two forces guide governments’ regulatory interventions in services markets: public interest considerations and private interest factors.³ From a public interest theory standpoint, intervention may be justified on either efficiency or equity considerations (Joskow and Noll, 1981). Efficiency concerns relate primarily to the existence of market failures, i.e. the inability of unchecked markets to deliver a socially efficient allocation of resources. As discussed in Section C.1, market failures in services markets tend to be more pervasive than in goods industries. They concern instances of asymmetric information, for instance when suppliers are better placed than consumers to assess the quality of the service they provide, imperfect competition, as with the natural monopolistic/oligopolistic structure of network industries, and externalities,⁴ such as the environmental consequences of heavy road transport. Equity considerations may also motivate governments’ regulation of services industries, to

avoid the unrestrained operation of markets leaving certain areas or groups of consumers underserved, for instance in sectors such as health services or telecommunications.

The private interest theory of regulation posits instead that government intervention is driven by the concerns of special interest groups, rather than by the pursuit of the public interest. Furthermore, even when acting in the pursuit of public policy considerations, governments will be guided by private interests in their choice of regulatory instrument (Stigler, 1971; Posner, 1974; Peltzman, 1976; Becker, 1983).

WTO (2012) provides further insights into the significance of private interest considerations in the regulation of services industries. First, as virtually all services trade barriers are regulatory measures, the most transparent form of trade intervention in goods trade, i.e. tariffs, is not applied to services markets. This opaqueness of services measures provides greater opportunity to mask any private interest rationale in regulatory intervention. Second, because of the intangible nature of services, regulation tends to be less often based on technical or scientific evidence than in the case of goods, and this further facilitates the masking of private interest motivations.

Finally, the high degree of complexity of much services regulation facilitates the “capture” of the regulators by incumbent domestic suppliers. As Laffont and Tirole (1991) show, regulatory capture – and thus inefficient regulation – is likely to occur when interest groups are highly concentrated and organized, and the degree of informational asymmetry between the regulated industry and the regulator is high. Fung and Siu (2008) argue that, when analysing the rationale for services trade liberalization, an explicitly political-economy model, which factors in private interest considerations, is more appropriate than a welfare-maximizing one.

The public interest and private interest views of policy-making also suggest possible explanations for governments’ decisions to open up some sectors and not others. From a public interest perspective, governments open up given sectors so that competition may bring about efficiency benefits. In contrast, from a private interest perspective, incumbent service suppliers’ ability to become organized and oppose policy changes that could adversely affect them results in little or no market-opening. Liberalization, or the lack thereof, may therefore be explained as the result of the interaction of these two forces, the one prevailing over the other at a certain time and place determining the policy outcome.

Box E.2: The GATS in brief

The WTO's General Agreement on Trade in Services (GATS) entered into force in 1995, at the end of the Uruguay Round of trade negotiations. The GATS is the first and only set of multilateral rules covering international trade in services.

Underpinning the GATS is the acknowledgment that, contrary to traditional perceptions, all services are tradable, but that such trade cannot be fully appreciated by drawing exclusively on a cross-border perspective. The intangible nature of many services implies that suppliers and consumers often have to be in physical proximity for services to be supplied. As a result, to capture all instances of services being supplied internationally, the GATS identifies four different "modes" of trading services. In addition to the traditional cross-border supply of services (mode 1), such as consultancy services provided to foreign clients over the phone, the GATS also encompasses instances when a consumer purchases a service abroad (consumption abroad, or mode 2), such as in the case of international tourism, as well as when services are traded through the supplier being present in another country, either via a commercial presence (mode 3), such as establishing an affiliate, or the temporary presence of natural persons (mode 4), such as consultants.

The GATS applies this comprehensive definition of trade to all services, with only two exceptions: "services provided in the exercise of governmental authority" and the bulk of air transport services (although the latter exclusion is subject to review). Counterbalancing this wide scope of application, the GATS provides for the across-the-board application of only very few obligations, most importantly most-favoured-nation (MFN) treatment, transparency (publication of measures) and the review of administrative decisions. MFN treatment (Article II of the GATS) requires that all foreign services and service suppliers be granted substantially the same treatment; the transparency obligation provides for the publication of all services measures that are generally applicable; and the rules on review of administrative decisions require members to maintain tribunals or procedures that enable foreign suppliers to seek review of, and redress for, administrative decisions affecting trade in services. At the end of the Uruguay Round, and later on, at the time of joining the WTO, nevertheless, members had the possibility of taking exemptions to the MFN obligation, for instance to protect a preferential treatment granted to one or several trading partners, including partners that were not WTO members, or to continue enforcing reciprocity requirements.

When it comes to its market-opening disciplines, the GATS stipulates that "market access" (Article XVI) and "national treatment" (Article XVII) apply only to the services sectors that each WTO member has inscribed in its own schedule of specific commitments, and only to the extent that no relevant limitations have been listed for any of the four modes of supply.

Commitments on market access delineate conditions regarding the permitted number of suppliers, volume, assets or value of services, the number of foreign employees, legal forms and foreign equity participation. It is noteworthy that several of these conditions are not predicated on the foreign nature of the service or the supplier, and hence market access commitments may apply in an origin-neutral manner. National treatment commitments lay down conditions with regard to non-discriminatory treatment of foreign services and service suppliers vis-à-vis their like domestic counterparts. Schedules provide legal guarantees that the access and non-discriminatory conditions bound therein will not be worsened. Moreover, "additional commitments" (GATS Article XVIII) allow members to undertake legally binding guarantees with regard to services trade-facilitating measures. All conditions listed in schedules constitute minimum levels of treatment guaranteed by each member to all other members and may hide, in practice, a laxer applied regime, which must also be applied on an MFN basis.

The GATS also contains a number of "good governance" provisions. In services sectors for which a member has made commitments, Article VI on "domestic regulation" requires, for example, that all measures of general application affecting trade in services be administered in a reasonable, objective and impartial manner. Moreover, Article VI:4 of the GATS calls upon WTO members to develop any necessary disciplines to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures do not constitute unnecessary barriers to trade in services.

Trade policy interventions in services markets may not be immediately understood by non-trade audiences. Given their intangible, non-storable nature, services are not traded through custom posts and this renders tariffs largely inapplicable. Thus, trade policy tools in services are essentially regulatory in nature. However, as discussed in WTO (2012), only a limited number of services regulations may be categorized as trade barriers, namely those that cannot be justified on public interest grounds, or that pursue public policy rationales in a socially inefficient manner. WTO (2012) contends that discriminatory measures are trade restrictions practically by definition. When it comes to non-discriminatory measures, those that limit market entry/establishment are also difficult to justify on efficiency grounds as, by affording protection from competition to incumbent suppliers, such measures diminish markets' overall contestability. Finally, non-discriminatory instruments that, instead, impact suppliers' operations appear to be those furthest removed from protectionist intents.

This assessment is broadly reflected in the way that services trade agreements, and the GATS first and foremost, are constructed (see also Box E.2). These agreements are premised on the key distinction between regulations that are "trade barriers", which are meant for eventual elimination, through negotiation, and all other relevant "domestic regulatory measures", which are only subject to some, more or less developed, good governance obligations.

Trade barriers have been defined in the GATS to encompass all discriminatory measures, as well as an exhaustive list of so-called market access limitations, such as non-discriminatory quotas that limit the number of suppliers or the quantity of output supplied in a market. Because services trade involves different modes of supply, barriers to trade, which are mostly behind-the-border measures, span a much broader set of policies than is the case for goods trade.

Measures referred to as "domestic regulation", on the other hand, are not considered barriers to trade. However, services trade agreements recognize that, in their pursuit of legitimate public policy objectives, such measures may nevertheless have trade-restrictive effects. Yet again, in view of the extended definition of services trade, a broad array of measures that govern how services are produced and consumed in an economy and that are not "trade barriers" may fall within this category. Services agreements also implicitly acknowledge that trade may be affected by the absence, rather than the presence, of a measure; to that effect, they enable governments to undertake positive regulatory actions and commit themselves to implementing them.

(c) "Going it alone" does not allow all potential benefits to be reaped

Most of the services trade reforms introduced over recent decades have emanated to only a limited extent from bilateral or multilateral trade negotiations. Governments have undertaken the vast majority of transformations, particularly with regard to trade via commercial presence (mode 3), largely unilaterally, driven by expected economic and development gains. They have only subsequently bound these reforms, to a greater or lesser extent, in trade agreements (Hoekman et al., 2007; Roy et al., 2007; Marchetti, 2009; Fink and Jansen, 2009; Adlung and Morrison, 2010; Miroudot and Shepherd, 2014; Mattoo, 2015; Balchin et al., 2016). The only exceptions are the phased-in commitments made during the extended negotiations on basic telecommunications and financial services (see Box E.3) and the services bindings undertaken by acceded members⁵ (Adlung, 2009).

The benefits of opening services markets have been estimated to be high and diffused across the entire economy (Asian Development Bank and OECD Development Centre, 2002). As illustrated in Section C, opening up services trade creates welfare gains by producing a more efficient allocation of resources, increasing the variety of services on offer and allowing the more productive services firms to expand. In addition to these "standard" trade benefits, however, the liberalization of trade in services also offers further potential benefits, given how important access to social services like health and education is to human capital development, and how vital the performance of intermediate services is to the competitiveness of all firms. Insofar as inefficient services entering firms' production functions generate costs for all downstream sectors, trade barriers, including non-discriminatory restrictions on market entry, and trade-restrictive domestic regulatory measures that protect incumbent suppliers, have wide economy-wide repercussions.

Yet, as shown in Section D, several services sectors, including a number of key infrastructural and producer services, are still heavily restricted in a number of economies. Examples include several transport and professional services, to name a few. Services liberalization in these contexts is limited; barriers to entry remain considerable, even for potential national competitors, and have proven difficult, if not outright impossible, to remove based on purely domestic processes. Thus, unilateral efforts at reform can be a challenge, as they are often not sufficiently strong and entrenched stakeholders are not easily won over. The regulatory intensity of many services sectors and

Box E.3: Extended negotiations on basic telecommunications and financial services

The WTO negotiations on basic telecommunications and financial services in the late 1990s are two services examples of how plurilateral negotiations dedicated to a particular sector or topic can succeed, be integrated into an existing agreement (the GATS) and be applied on an MFN basis. They are an illustration of the new negotiating dynamic that services agreements offer.

These negotiations, which led, for basic telecommunications, to the Fourth Protocol to the GATS and, for financial services, successively to the Second and Fifth Protocols, were borne out of initiatives taken towards the end of the Uruguay Round of multilateral trade negotiations. At the time, the extent of commitments in these sectors was deemed insufficient to provide for a meaningful outcome.

For basic telecommunications, although the initiators of the negotiations were initially mainly smaller industrialized economies, the trend in sector reforms ultimately attracted not only the larger industrialized economies, but also a great many developing countries that found the negotiations useful to catalyse debate on reform of the sector, as well as an opportunity to lock in reforms in the GATS to avoid back tracking once reforms had been put in place. Broader participation was also due, in part, to the flexibility offered by the GATS to allow members, including developed and developing countries, to take commitments on partial liberalization or to take commitments that would be phased-in on a specified, and committed, date in the future.

Turning to financial services, the negotiations were initially planned to be held during a six-month period following the entry into force of the GATS, that is until the end of June 1995. They were finally concluded at the end of July 1995, albeit on an interim basis, and those results were incorporated in the Second Protocol to the GATS. While many members had improved their previous commitments, the results were still considered unsatisfactory, and members decided to renew negotiations on financial services two years later. Negotiations were successfully concluded in December 1997. The improved commitments entered into force (for most of its signatories)⁶ on 1 March 1999.

The Fifth Protocol proved to be a landmark agreement, achieved at the – critical – time of the Asian financial crisis, which had broken out around July 1997 and raised fears of a worldwide economic meltdown due to financial contagion. Nevertheless, pushed by a unique dose of determination and political will, WTO members, representing over 95 per cent of world trade in financial services, remained faithful to their negotiating mandates and commitments. It was, additionally, proof of how critical mass-based plurilateral negotiations within a multilateral setting could deliver a solid MFN-based outcome.

The results achieved in – basically – three years of negotiations were outstanding: by the entry into force of the WTO in 1995, 66 members had made commitments on financial services, of which 29 were improved during the 1995 negotiations and incorporated in the Second Protocol to the GATS. The 1997 negotiations brought the number of improved schedules of commitments to 56. By the end of 1997, 89 members had commitments on financial services, including those contained in the Fifth Protocol, those arising from the end of the Uruguay Round that remained unchanged throughout negotiations, and others incorporated in the meantime through new members' accession processes.

the resulting relative ease with which private interests may capture regulators provide possible explanations for the challenges governments encounter in opening services markets, and point to the limits of what they may be able to achieve autonomously, as Section E.4(a) will discuss.

In addition to the difficulty of overcoming private-interest-motivated resistance to market openings in certain areas, there are other downsides to governments executing reforms autonomously. First,

when reforms are not anchored internationally, the possibility of policy reversals remains significant. This is also the case for areas that have always been competitive and open to foreign suppliers, and where no policy changes are necessary, as the introduction of new trade restrictions at a future point in time can less easily be forestalled. This challenge may be particularly acute nowadays, as governments ponder whether and how to respond to the opportunities, but also the challenges, of the digital economy.

Another disadvantage of countries setting domestic regulation completely independently of one another is that any negative externalities on foreign suppliers are not typically considered in national regulatory processes, resulting in an increased likelihood of regulatory heterogeneity (Hoekman et al., 2007). Diverse rules across jurisdictions are a source of trade costs, in that they imply the need for suppliers to comply with different domestic regulatory requirements in different countries to supply the same or similar services. Although not rooted in

protectionist intents, by segmenting international markets, regulatory differences also prevent the exploitation of economies of scale.

Against this background, international cooperation on services trade policies has an important role to play. As illustrated in Box E.4, the main theories of international trade agreements go some way towards explaining various, though not necessarily all, of the reasons why economies cooperate by concluding services trade agreements.

Box E.4: What explains services trade agreements?

Two main rationales, which may be complementary, have been put forward by economists to explain the existence of trade agreements: the terms-of-trade theory and the commitment theory.

According to the terms-of-trade model, trade agreements can be used to avoid a non-cooperative and inefficient situation in international trade (Bagwell and Staiger, 1999, 2002; Staiger, 2015). In the absence of an agreement, governments may face incentives to implement trade policies that protect local producers at the expense of foreign exporters with the objective of altering the terms of trade (i.e. the price of exports relative to the price of imports) and thus increasing their national income. However, if all governments decided to impose such trade policies, not only would relative prices not change, but overall economic activity would fall. Thus, in a situation that is known as the “Prisoner’s Dilemma”, all governments would all end up being worse off. By giving exporters a “voice” in the trade policy choices of their trading partners and making foreign governments responsive to the costs resulting from the restrictions they impose, trade negotiations can resolve this problem, to the benefit of both consumers and domestic producers (WTO, 2012 and Copeland and Mattoo, 2008).

However, there are reasons to question the usefulness of the terms-of-trade theory when it comes to services trade. This is essentially because that theory is premised on trade agreements having a unique – cross-border – mode of trading and on protection being afforded through border measures. When it comes to services trade, however, the modes of supplying services are multiple, and may be complements or substitutes. In that regard, although not referring to services agreements directly, Blanchard (2007) argues that a country that could have manipulated border protection to improve its terms-of-trade will have no incentive to do so if the imports originate from its own investors with ownership interests in the exporting countries and sectors. Moreover, tariffs or equivalent import charges are largely irrelevant to services trade: they are hardly ever applied to services imported cross-border but are replaced by quantitative and other import restrictions and are totally inapplicable when services imports are supplied directly within national boundaries by foreign suppliers that are locally present, without crossing international borders (Staiger and Sykes, 2017).

Taking a commitment approach to trade agreements instead explains the main rationale for governments to engage in trade negotiations by the need to sustain and enhance the credibility of national regulatory reform programmes (Maggi and Rodriguez-Clare, 1998, 2007; Matsuyama, 1990; Staiger and Tabellini, 1987). Policy-makers need to convince firms and consumers that trade reforms will be lasting, but the commitment to reform cannot be identified ex ante by the private sector. Thus, if the adjustment costs entailed by the reform are high, and both domestic and foreign service suppliers suspect that the government may re-impose restrictions in the future, they will refrain from investing in the country, with the result that the benefits of the reform will not fully materialize. Trade agreements provide useful instruments to anchor unilateral policy reforms and can therefore address this problem, although pre-existing autonomous action by governments to enact national liberalizing reforms seems to be a necessary step toward trade negotiations (Marchetti, 2004).

The commitment theory presumes that trade agreements bind actual levels of market openness, immediately or on the basis to a pre-set timetable. However, as Marchetti and Mavroidis (2012) point out, the bindings undertaken under the GATS, in particular, anchor less than actually applied regimes. As such, the commitment theory offers only a partial explanation for trade negotiations in the WTO.

The lock-in mechanism provided by services trade agreements offers an important rationale for economies to collaborate with each other. As Copeland and Mattoo (2008) note, trade agreements present important commitment advantages, domestically and internationally. At home, signing a trade treaty helps governments stand up to local protectionist interest groups. By putting governments under certain obligations and raising the costs of their acquiescing to requests for higher trade barriers, trade agreements ensure that levels of protection stay lower and that fewer resources are dissipated on lobbying efforts. In the international context, binding policies in a trade agreement enhances the credibility and predictability of those trading conditions. It offers guarantees to services suppliers that the fixed costs of establishing a commercial presence in a foreign market, passing local qualifications or acquiring local knowledge will not be negated by the local government, e.g. suddenly blocking access to their market or imposing restrictive conditions with the aim of extracting rents from the services supplier. Although commitments that bind less than actually applied regimes provide governments with some margin to partially reverse reforms, they still guarantee against extreme policy reversals.

Moreover, even when markets are already open, and where there is no need for further lobbying efforts by exporting firms, there is still scope to negotiate the binding of the status quo. Indeed, Hoekman et al. (2007) argue that, when services regimes are already fully liberalized, governments may still invest political capital in the WTO negotiating process in order to lock in existing levels of openness.

(d) Services bindings are valuable... and interdependent on domestic regulation

It is empirically demonstrated that unpredictable trade regimes and the perils of policy changes are an important source of costs for traders and that the predictability of multilateral bindings has commercial value in itself (WTO, 2014; Osnago et al., 2018). This is particularly true for services trade, especially in the case of infrastructural services that are traded through the establishment of a commercial presence (mode 3), as their supply tends to imply high sunk costs⁷ (OECD, 2017b). Therefore, guarantees afforded by trade agreements against arbitrary policy reversals provide an important incentive for service providers to supply their products internationally. OECD (2017b) finds that even when trade agreements bind existing levels of services openness, the reduction in uncertainty furnished to service traders by these legal commitments has a positive and significant effect on bilateral trade volumes.

Ciuriak and Lysenko (2016), Albert and Tucci (2016) and Lamprecht and Miroudot (2018) also find a positive and significant impact of services commitments on services trade. Although the effect of new liberalization on trade is, predictably, estimated to be higher than that of binding pre-existing services policies in WTO commitments, the latter still accounts for half of the impact that the actual increase in the level of services openness has on trade flows (Ciuriak and Lysenko, 2016). Lamprecht and Miroudot (2018) find that increasing the average policy bindings under the WTO to the levels bound in RTAs, without any actual new opening, still increases trade by between 8 per cent and 12 per cent depending on the sector.

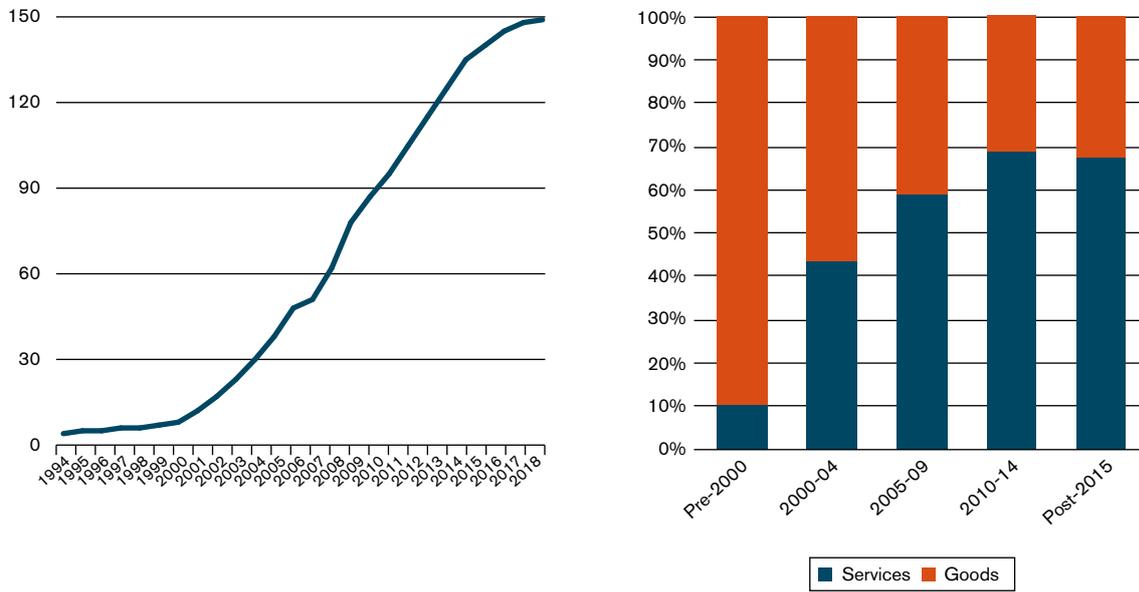
As Section E.3(b) will illustrate, the policy bindings in RTAs are appreciably higher than those under the GATS. This is largely a reflection of the fact that most GATS commitments date from 1995. With the exception of the 1995-97 extended sectoral negotiations in telecommunications and financial services,⁸ and aside from the process of individual economies acceding to the WTO, no further services negotiations have been concluded in the WTO since then.

In the meantime, however, an increasing number of RTAs have been signed covering services trade. Even though the level of participation of WTO members in services RTAs varies, the number of services RTAs has drastically increased since the entry into force of the GATS (see Figure E.1). From less than 10 in 2000, their number skyrocketed to 148 by the end of 2018. Over 130 WTO members (approximately 80 per cent of the total membership) are party to at least one RTA covering services. While the overwhelming majority of RTAs concluded before 2000 covered only goods, more than two-thirds of those concluded over the last decade also include disciplines on services trade (see Figure E.1).⁹

Another significant trend, especially in the last decade, is the fact that an increasing number of services RTAs have been concluded among developing economies (see Figure E.2).¹⁰ Overall, most of the increase in services RTAs since 2000 concerns agreements to which developing economies are parties. Still, few least-developed countries (LDCs) have participated in services RTAs so far, and some regions have been significantly less exposed than others (Africa, in particular), although various other services RTAs are currently under negotiation. The most active members, in terms of number of notified agreements, include Chile (22), Singapore (21), the European Union (17), Japan (16), China (14), the Republic of Korea (14), the United States (13), Mexico (12) and Australia (11). Many of the more important bilateral services trade relationships are not currently covered

Figure E.1: Services RTAs have grown significantly

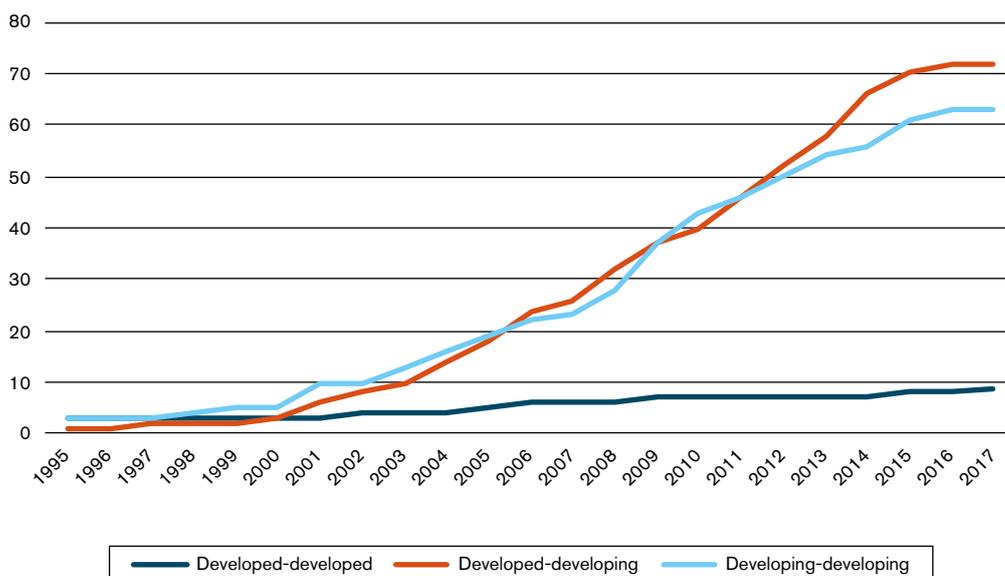
Number of services RTAs notified to the WTO, by year of entry into force (left) and proportion of RTAs notified to the WTO that cover trade in services, by year of entry into force (right)



Source: WTO Secretariat, December 2018.

Figure E.2: Developing countries are increasingly parties to services RTAs

Number of services RTAs, by level of development of parties



Source: WTO Secretariat, December 2018.

by RTAs, although, especially in more recent years, a number of agreements involving significant service traders have been notified, e.g. European Union-Japan (2019), the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (2018), European Union-Canada (2018), China-Republic of Korea (2016), and India-Japan (2011).

Since the GATS was negotiated, and in light of the fact that no further services negotiations have been concluded in the WTO since the late 1990s, RTAs have provided the main avenue to lock in services policies. Regardless, the WTO avenue remains open to governments which wish to anchor their services policy reforms, and offers the advantages of a potentially much wider participation and less volatile setting than RTAs sometimes provide. Additionally, the WTO framework includes unique features that help reinforce the stability and predictability of trading conditions, notably, in spite of its current challenges, the Dispute Settlement Mechanism, as well as the institutional structures for overseeing the implementation of commitments. The latter comprise the transparency, monitoring and review mechanisms for trade policies, which furnish a framework for benchmarking, peer-reviewing and potentially subjecting governments' actions to international scrutiny. The WTO also provides a global platform for cross-national knowledge-sharing and for the identification, across 164 economies (at time of writing), of good, if not best, practices in regulating services sectors in a manner that is least trade-restrictive. In addition, it allows for the development of an accompanying system of common and shared rules that facilitates services trade.

International collaboration, whether at the multilateral, regional or bilateral level, has focused both on lowering trade barriers and on domestic regulatory measures. There is, in fact, strong complementarity between international engagement on these two kinds of services measures.

First, as services trade is increasingly opened up, it becomes essential to ensure that domestic regulatory measures are not designed in a way that frustrates market opening. Beyond their impact on trade, poorly designed domestic regulatory measures may impair overall business dynamism and thus place a heavy burden on all services firms, regardless of their origins, as well as on their consumers (OECD, 2017b). Downstream business customers and final consumers pay a price premium for a policy environment that reduces market contestability. OECD (2017b) quantifies this premium as equivalent to a sales tax on purchases, and estimates it to range, on average across 42 economies, from 3 per cent in road freight transport

to almost 40 per cent in broadcasting, with large variations across economies. Although these estimates also include the impact of non-discriminatory entry barriers, and are not exclusively focused on measures of domestic regulation, they nevertheless point to the gains that could be reaped from pro-competitive reforms targeted at inefficient service regulation that enables incumbent firms to consolidate and expand their market power when competitive pressures are weakened (OECD, 2017b). Indeed, this is one area where cross-national collaboration has taken place, both multilaterally and regionally, and where further efforts are underway, as Section E.3(c) and (d) will show.

Second, and as will be discussed in more detail in Section E.4(c), cooperation on domestic regulatory measures, and regulatory governance more generally, may facilitate the further opening-up of services markets. Although not sufficient in and by itself, such regulatory cooperation is likely to be a necessary condition for liberalization to happen. The quality of economic governance is essential to ensure that services openings fully deliver their potential economic benefits, both for the liberalizing and the exporting country. However, not all economies have the requisite capacity to design, enforce and review the regulatory actions needed to this effect. Moreover, even for those economies that possess the necessary resources, domestic regulation has at times proven difficult to design and enforce, leading in some instances to significant, albeit potentially unintended, trade impacts. As such, international collaboration may contribute, on the one hand, to mobilizing the assistance necessary for developing countries to build and improve their regulatory governance structures and facilitate new services market opening, and, on the other, to promoting information exchanges and the sharing of best practices that might inform all countries' services policy-making towards least trade-restrictive outcomes. The opinion piece from Natallie Rochester (see page 166) includes a discussion of this aspect from a developing-country perspective.

The possibility for reciprocity-driven market openings is usually put forward in the literature as a premise for trade negotiations; however, reciprocity-driven bindings that imply no new market-opening might still offer a rationale. In addition to providing an avenue by which to credibly commit to their own pre-existing trade openings, trade negotiations enable governments to exchange "bindings for bindings". Governments might find it easier to "defend" domestically having committed to certain services policies if they can show that they have obtained comparable commitments from their trading partners. This may not only apply to bindings of access levels, but also to bindings relating to trade-facilitating

disciplines on domestic regulatory measures. Undertaking obligations jointly with other countries not only offers guarantees to service suppliers of the application of comparable criteria across various jurisdictions, thus reducing trade costs, but could also provide regulators with some degree of comfort that, as other governments are equally ready to take them on, such obligations would not unduly encroach on their regulatory freedom.

This emphasis on bindings does not imply that services trade agreements stand no chance of delivering new market-openings. Although, as will be discussed in Section E.4(a) and (b), this has proven challenging so far, as technology advances and economies and production structures evolve, governments are likely to face growing pressures to open up their own markets and seek mutual openings on the part of their trading partners.

3. How countries collaborate in the services sphere

As Section E.2 has illustrated, regulation is pervasive in services industries. It is also the virtually exclusive trade policy tool in this sector. As services trade evolves under the impetus of technological advances, fragmentation of production, demographic trends, income growth and environmental concerns, regulation becomes even more crucial. The kind of domestic regulatory measures introduced, and the quality of the regulation passed, will play a very significant role in ensuring that the opportunities of services trade to strengthen growth, development, economic diversification and inclusiveness are fully realized. This explains why countries have cooperated on services trade policy, and why they are continuing to do so.

From a theoretical viewpoint, Mattoo and Sauv  (2011) note that assessing the level of governance at which international cooperation should take place, whether multilaterally in the WTO or at the regional/preferential level, requires an extension of conventional trade theory to factor in the multiplicity of modes of supply and the regulatory nature of trade protection specific to services trade. As most services trade barriers increase the operating costs faced by foreign suppliers without necessarily generating equivalent domestic rents, granting preferential access costs little or nothing, as little or no revenue is lost, although countries outside the preferential arrangement may be left worse off.

Still, there is the risk that RTAs may lead to the establishment of relatively inefficient suppliers, less likely to generate the greatest positive spill-

over effects of technology and know-how transfers. As such, Mattoo and Sauv  (2011) assert that, in the case of services, particularly for infrastructural industries that have high locations-specific sunk costs, non-MFN trade-opening carries long-term risks that are not encountered in the case of goods trade. Given the role that the establishment of a commercial presence plays in services trade, any detrimental effects on the competitive landscape resulting from preferential liberalization may be long-lasting, leading these authors to argue in favour of multilateral market openings applied on an MFN basis. In this vein, it is noteworthy that, in several RTAs, "preferential" bindings relate to measures that are, in actual fact, applied on an MFN-basis, as further discussed in Section E.3(b)(i).

Conversely, when it comes to international cooperation on "behind-the-border" domestic regulatory measures, several commentators argue that this might be more fruitfully pursued at the regional/preferential level, or among small group configurations, rather than multilaterally. Braga and Hoekman (2017) posit that cooperation on domestic regulatory policies cannot take place among 160+ economies and might require smaller-group level engagement. Mattoo and Sauv  (2011) argue that regulatory cooperation might be more desirable, and is probably more feasible, among a sub-set of countries, as this is likely to facilitate the deeper convergence required to fully integrate markets, as was the case with the European Union. Balchin et al. (2016) find that regional negotiations are particularly important to facilitate the mutual recognition of services sector qualifications. On the basis of the analysis of all mutual recognition agreements (MRAs) notified between 1995 and 2007, Marchetti and Mavroidis (2012) conclude that WTO members usually enter into recognition agreements with other WTO members that are partners in RTAs, share the same language, are in geographic proximity, or exhibit all of these features. Regardless, regional efforts need to take into account the general obligations adopted at the multilateral level; regional efforts that are consistent with multilateral principles can, as these authors suggest, achieve regulatory complementarity at a higher level of detail and specificity.

The sections that follow describe the state of play with regard to international cooperation on lowering services trade barriers and on domestic regulatory measures. They present the multilateral level first, and provide a brief description of currently on-going discussions, and the preferential level thereafter. A final section also provides an overview of the regulatory cooperation activities of other international organizations that are most relevant to trade in services.

By Natallie Rochester,
Trade and Development Consultant,
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The potential of trade in services for developing countries

The conclusion of the Uruguay Round and the creation of the World Trade Organization in 1995 marked the first time commitments on trade in services would be undertaken not only by developed countries, but also by many other economies outside of the European Union and parties to the North American Free Trade Agreement (NAFTA). The now conservative commitments under the General Agreement on Trade in Services (GATS) reflected that WTO members were less familiar with the trade disciplines in the new subject area of services than with those covered by the General Agreement on Tariffs and Trade (GATT). A core tenet of the GATS is the right to preserve policy flexibility and the right to regulate, and to introduce new regulations on services to meet national policy objectives.

However, international production integration, business practices, time and the dynamism of technological advances have challenged the relevance in today's trading environment of many of the reservations and conditions of WTO members in the GATS commitments on services sectors and modes of supply. Progressive liberalization on trade in services, including through the termination of MFN exemptions, was intended by WTO members to promote the economic

growth of all trading partners and the development of developing countries. New commitments on services liberalization could align the WTO bindings to the status quo regime in a wider range of services sectors across the expanding WTO membership. This is important for the transparency of global services and predictability for traders, and could be supported by recognition agreements among members. Improved commitments by WTO founding members would improve the balance of rights and obligations of acceded WTO members, including small vulnerable economies and newly independent states, which have typically made wide and deep services commitments.

When the WTO was established, developing states were not equipped to compete with more advanced economies in capital-intensive extractive, agricultural processing and manufacturing industries. At that time, it was less understood that there is a symbiosis between trade in services and the growth of other services and non-services; and that efficient trade in value-adding services supports competitiveness and facilitates moving up the value chain in non-services sectors. In 2017, foreign direct investment in manufacturing and services were almost on a par (WIR, 2018). In

response to price volatility and preference erosion, traditionally commodity-dependent developing countries are relying more on trade in services to mitigate vulnerability. Services account for more than two-thirds of global gross domestic product (OECD and WTO, 2017), are a major contributor to employment, and their trade has been more resilient in times of economic crisis than goods trade.

Services sector promotion, intellectual property-based innovation, and technology transfer and know-how will be critical to reducing the vulnerability of developing economies. Therefore, increased participation in international services trade is an essential element of a nation's sustainable development plan.

Consensus on domestic regulation disciplines would reduce disguised barriers to trade in the prospective markets of developing members, and would reduce transaction costs for traders by increasing the transparency of regimes and improving market information and decision-making. Significant progress has been made in this area. However, the built-in agenda of the GATS evidenced the difficulty of resolving complex conceptual issues of trade in intangibles using a GATT-

inspired construct, particularly in regard to subsidies and safeguards.

These challenges in rule-making persist because of the inter-dependence of modes of supply and economic activities to fulfil transactions with consumers. WTO members have been exploring the unique nature of the operation of trade in services with attention to the trends in specific sectors, and the appropriate scheduling framework for guaranteeing effective market access and national treatment. Clarification and understanding of trading interests in services have sometimes been limited to participants in plurilateral negotiations. Cooperative engagement on trade in services at the level of the WTO membership and enhanced frameworks for strengthening information exchange could help to inform developing countries' formulation of their negotiating positions, their participation in

negotiations and their eventual implementation of new WTO commitments on trade in services. In practice, access to distribution channels in partner markets will be the key to unlocking new markets for developing countries. The LDC Services Waiver¹¹ and related implementation modalities are a good reference point for responding to developing country priorities in services negotiations. Effective delivery of cooperation, as provided for under the GATS Article IV, Aid for Trade and other trade-related capacity-building efforts in trade in services, would enhance the prospects of concluding, and capitalizing on, new trade commitments in the WTO.

Telecommunications and information communication technologies and financial services were recognized early in the existence of the GATS as sectors in their own right, as well as infrastructure services on which other sectors could be built.

In today's digital economy, we understand that these services are critical for enabling commercial participation regardless of levels of development and size. Digitalization also expands the scope of cross-border services, as reflected in the increase in business services and ICT transactions in 2017 (WIR, 2018). Digitalization also disrupts trade in goods patterns in favour of goods with a digital equivalent, and transfer of digital information through processes like 3D printing change relationships previously based on the geographic location of production. Therefore, developing countries have an interest in binding commitments on services liberalization, services rules and other key areas of e-commerce and MSMEs. Looking ahead, approaches to negotiating trade rules should look to the different WTO agreements in order to ensure coherence in commitments and maximize the potential of a linked world.

(a) International cooperation on lowering trade barriers at the World Trade Organization

(i) *State of play*

Specific commitments under the GATS determine the extent to which WTO members provide for "market access" (Article XVI) and "national treatment" (Article XVII) across different services sectors and modes of supply. Specific commitments on market access and national treatment in relevant sectors can be used to encourage further competition and investment in services sectors, anchor liberalization undertaken autonomously, and enhance the credibility of policy plans. Also, commitments that bind existing levels of access provide enhanced transparency and predictability and prevent policy reversals that would result in increased protection.

However, the current commitments of WTO members under the GATS, which are in most cases over 20 years old, are modest overall, and generally do not

guarantee the current applied level of openness of services trade policies (see, for instance, Borchert et al., 2011). This is because during the Uruguay Round, members put greater effort into establishing the new services trade agreement than negotiating commitments. Multilateral market opening negotiations have not produced significant results since then, except for the extended negotiations on financial services and basic telecommunication services (1995-97), which successfully resulted in expanding commitments, and commitments undertaken by members that acceded to the WTO after its creation in 1995.¹²

Given the nature of services trade barriers, GATS commitments are not as easy to summarize and quantify as tariff concessions. They can be analysed by looking at their sectoral scope – the number or proportion of sectors in which guarantees have been contracted – and the level of treatment that has been bound under each mode of supply for sectors committed for market access and national treatment.

As regards sectoral coverage, the majority of WTO members do not have commitments in the majority of services sectors. As shown in Figure E.3, on average, WTO members have specific commitments in just over one-third of all services sub-sectors. Sectoral coverage varies significantly across different groups of members, with developed countries (66 per cent) having, on average, more commitments than developing economies (28 per cent). LDCs have, on average, a smaller share of sub-sectors committed (21 per cent). Members that went through the process of accession to the WTO have tended to undertake more commitments than original members, in a number of sectors similar to that of developed countries. While the share of sectors covered varies across groupings, the range also fluctuates significantly within each group. For example, among developing economies, one member had only one sub-sector committed, while another had as many as 132.

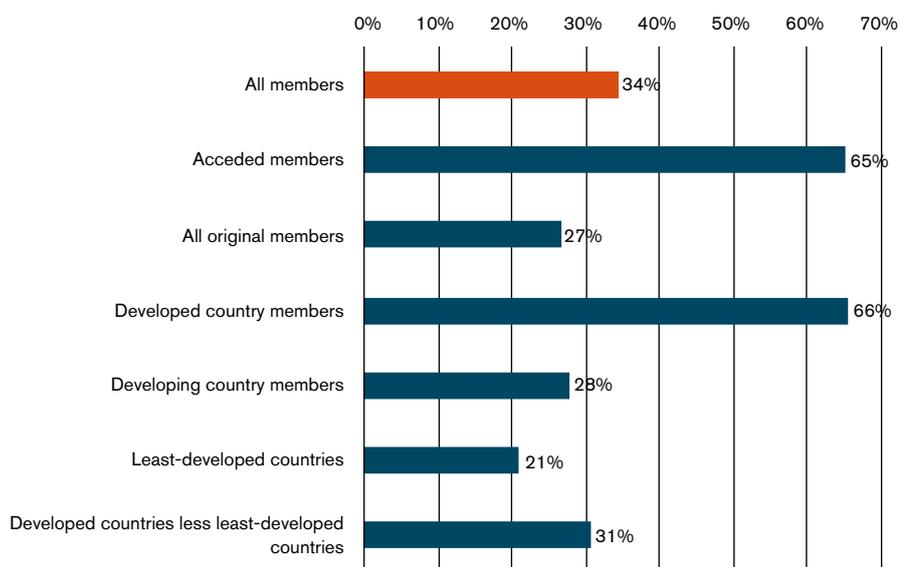
As Carzaniga et al. (2015) find, the market-opening commitments, as well as the domestic regulatory disciplines, subscribed by acceded members differ substantially from those undertaken by original WTO members at similar levels of development. By examining the schedules of 31 acceded members,

it may be observed that these members committed to a significantly higher degree of trade-opening compared to those undertaken by original WTO members. This is borne out by the wider range of sub-sectors committed and the relatively high numbers of full bindings, without market access or national treatment limitations, undertaken by these members.

Some services sectors have tended to attract more commitments than others. For example, tourism, financial, and telecommunication services have attracted commitments from the majority of members, while other sectors, such as transport, distribution, postal-courier, environmental or audio-visual services have attracted fewer commitments (see Figure E.4). Consistent with figures on total sub-sector coverage, the proportion of acceded members with commitments in various sector groups is much higher than for other members. As illustrated in Figure E.5, a large majority of acceded members have commitments in most sector groups. For original members, the situation is almost the reverse: tourism, financial, telecommunication and business services are the only sectors where the majority have certain specific commitments.

Figure E.3: GATS commitments differ across different groups of members

Average proportion of services sub-sectors subject to specific commitments under the GATS, by different groups of members

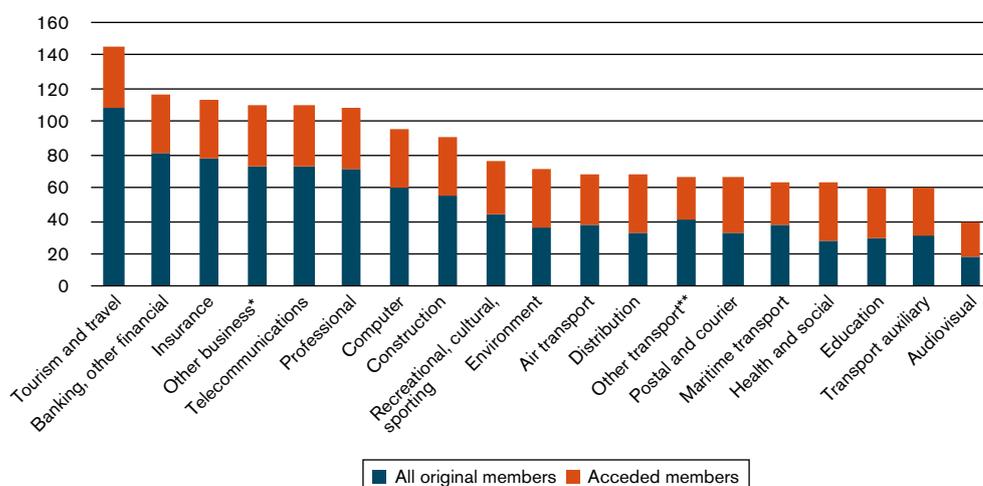


Source: WTO Secretariat, May 2019.

Note: Groups of members are based on definitions used in the WTO Secretariat report "Participation of developing economies in the global trading system" and WTO's Statistics Database. The number of services sub-sectors is based on the Services Sectoral Classification List (WTO official document MTN.GNS/W/120).¹³ The schedule of the European Union (25) is counted as one, except for the categories of "original members" and "acceded members", where the schedule of the then European Communities (12) is used, given that a number of the EU (25) members acceded to the WTO after 1995.

Figure E.4: GATS commitments vary by sector

Number of members with specific commitments, acceded members and other members by sector



Source: WTO Secretariat, May 2019.

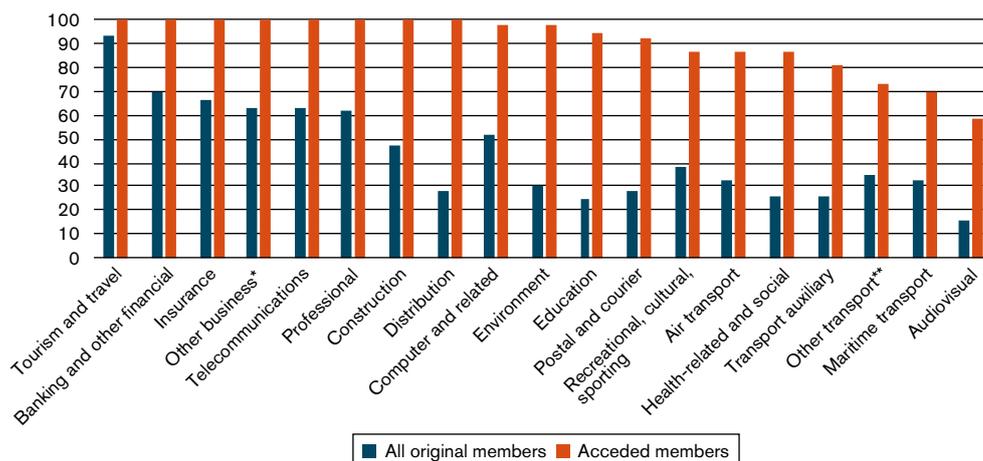
Note: European Communities (12), which is used given that a number of the EU (25) members acceded to the WTO after 1995, are considered as one.

* Business services other than professional and computer and related services.

** Transport other than maritime, air, and auxiliary services to all modes of transport.

Figure E.5: Acceded members have committed more sectors than other members

Percentage of acceded and other members with commitments, by sector



Source: WTO Secretariat, May 2019.

Note: European Communities (12), which is used given that a number of the EU (25) members acceded to the WTO after 1995, are considered as one.

* Business services other than professional and computer and related services.

** Transport other than maritime, air, and auxiliary services to all modes of transport.

To summarize the level of treatment bound for each sub-sector committed, a straightforward approach is to distinguish, for each mode of supply, between full commitments (i.e., unrestricted), partial commitments (with some limitation(s) to market access/national treatment), and “unbound” (no commitments on market access/national treatment for a particular mode of supply). As illustrated in Figure E.6, sector-specific commitments on mode 3 tend to be subject to more limitations and mode 2 commitments are more unrestricted, while mode 1 is relatively more “unbound”. Mode 4, for its part, is typically subject to cross-sectoral entries that limit commitments to certain categories of natural persons. This general pattern does not vary extensively across different groups of WTO members.¹⁴

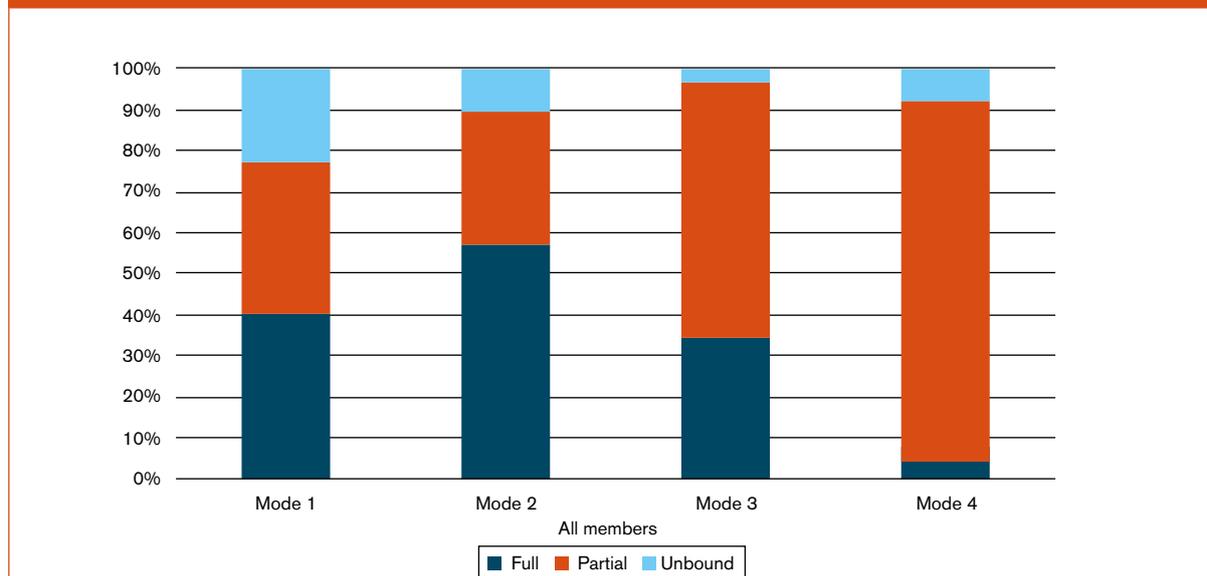
The two levels of analysis – sectoral coverage and levels of commitments – are combined and reflected in Figure E.7. In that context, the average incidence of full, or even partial commitments, at the sector-specific level is rather limited. However, the incidence of commitments is higher for acceded members, in particular full commitments for modes 1, 2 and 3.

The situation varies significantly across different sectors. For example, the proportion of schedules that contain commitments on cross-border supply and commercial presence for such digital infrastructure services such as voice telephony, computer services, and online information and database retrieval, for example, is higher than in a number of other services sectors, though more than one-third of schedules provides no guarantees of treatment in these areas. For its part, retailing services is uncommitted in the majority of members' schedules. Furthermore, the number of schedules containing commitments on mode 1 is limited in relation to services where the increasing performance of digital networks is providing opportunities for cross-border electronic supply, such as accounting, engineering, research and development, advertising, audiovisual or educational services.

Further analysis has been conducted to provide a clearer picture of the level of openness/restrictiveness suggested by GATS commitments by looking at the type and scope of limitations listed (Gootiiz and Mattoo, 2009; Miroudot and Pertel, 2015). Indeed, “partial” commitments may sometimes be highly

Figure E.6: Different modes of supply enjoy dissimilar levels of commitments

Average levels of commitment by mode of supply for sub-sectors scheduled (%)

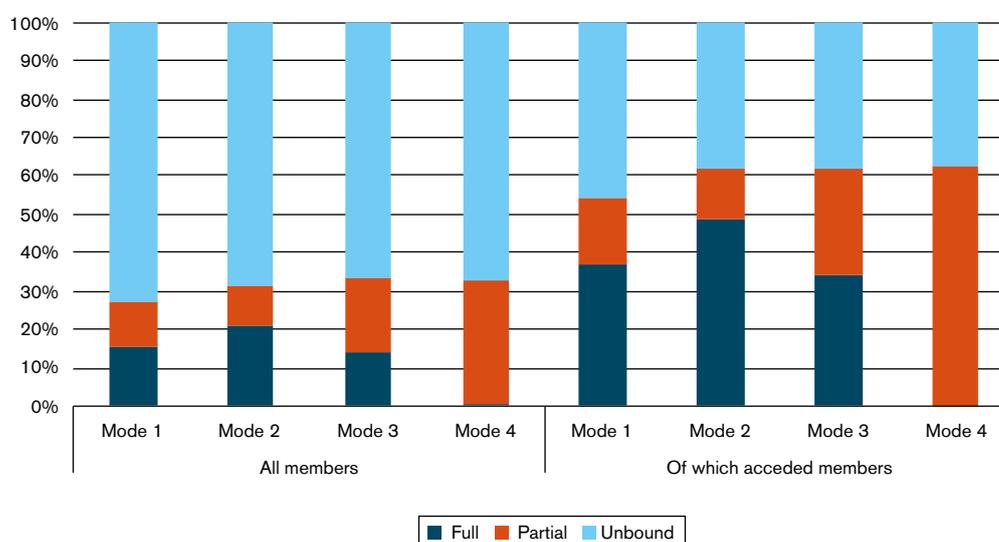


Source: WTO Secretariat, May 2019.

Note: The four modes of supply of the General Agreement on Trade in Services (GATS) are as follows: mode 1 is cross-border supply, mode 2 consumption abroad, mode 3 the establishment of a commercial presence in a foreign country and mode 4 the presence of natural persons abroad. The vertical axis represents the average proportion of full, partial and unbound entries for market access and national treatment across sector-specific commitments, per mode of supply. European Communities (12), which is used given that a number of the EU (25) members acceded to the WTO after 1995, are considered as one. Horizontal limitations are not taken into account in determining whether sector-specific commitments are “full” or “partial”. “Full” means that commitments do not contain sector-specific limitations for both market access and national treatment, for a given mode of supply. “Partial” commitments contain some sector-specific limitation to market access or national treatment or are “unbound, except as indicated in the horizontal section”. “Unbound” means that no commitment is undertaken for a given mode of supply. The number of services sub-sectors is based on the Services Sectoral Classification List (WTO official document number MTN.GNS/W/120).

Figure E.7: The incidence of commitments for acceded members is higher

Average levels of sector-specific commitments by mode of supply for all sub-sectors (committed or not) (%), all members and acceded members



Source: WTO Secretariat, May 2019.

Note: See Figure E.6 for further details. In Figure E.7, “unbound” also includes uncommitted sub-sectors.

restrictive, and others much less so. A number of sector-specific commitments do not bind the existing level of openness and provide instead more restrictive guarantees than allowed in practice, especially in view of the autonomous trade-opening that has taken place since Uruguay Round commitments were undertaken.

(ii) Determinants of GATS commitments

Limited work has been undertaken on the determinants of commitments in the GATS. As explained by Francois and Hoekman (2010):

“[a]nalysis of the determinants of commitments is more complex than for goods (the GATT) because of the need to explicitly consider the multiple modes through which trade can occur and map this to the endowments (comparative advantage) of countries. It is also important to differentiate predictions regarding preferences for applied trade policies from commitments on such policies. The theory predictions regarding determinants of trade policy preferences pertain to actual (applied) policies, so it is not necessarily surprising that they do not do well in explaining commitments in the GATS”.

Some attempts have been undertaken only for specific sectors, in particular financial services. On the basis of a simple model of endogenous trade policy on financial services, Harms et al. (2003)

explore the determinants of GATS commitments in this sector – on the basis of indices on financial services protection that are based on members’ commitments – resulting from the 1997 extended negotiations. Harms et al. are the only authors that have derived their explanatory variables from a formal trade policy model. They find that opening up banking services, and, to a lesser extent, opening up securities services, is explained well by their theoretical framework, which caters for distributional conflicts among different domestic groups (in particular the domestic banking sector and workers, whose welfare is a proxy for general welfare), as well as future trade negotiations (which may lead to future trade-offs). They generally find that greater financial sector development, a high degree of unionization of domestic workers, greater macroeconomic stability, better prudential regulation, and a greater foreign bank presence are all determinants of liberalization commitments. However, the possibility for an economy of exchanging concessions across different sectors in future negotiations leads to a more protectionist regime today.

Valckx (2004) also looks into the determinants of financial services liberalization commitments. He finds that a country’s choice of commitment level is determined by a number of macroeconomic and institutional variables, such as economic growth, inflation, openness, and the performance of the banking sector. “Peer group effects” seem to have

played a role as well, in the sense that countries from the same region or income group adopted a similar level of commitments.

Other studies focus on the determinants of members' commitments in all sectors. Egger and Larch (2008) find that large and rich (capital-abundant) economies tend to be more inclined to lower barriers to trade and investment in services than small and poor ones, even though the latter group of economies should experience the larger welfare gains from doing so, according to the standard general equilibrium theory of trade and multinational enterprises. According to Egger and Larch, this result might be explained by the negotiation process and the lack of comprehensive domestic regulatory frameworks of services sectors in poorer economies. They also find that economies that were active in opening up trade prior to the advent of the GATS, through participation in preferential trade agreements, tended to commit to more extensive services liberalization than other economies. Furthermore, they also find some "peer group effects", in the sense that economies are more likely to make extensive commitments if their natural trading partners or neighbours do so as well.

Drawing on international political economy insights, Roy (2011) looks at the determinants of members' commitments in the GATS. His main finding is that more democratic regimes – theoretically more responsive to public opinion's general preference for openness and less reliant on the discretionary use of trade protection to gather support from specific groups – and countries with greater human capital endowments – reflecting comparative advantage in services – are associated with greater bindings, measured in terms of sectoral coverage and level of treatment bound. Other factors positively related to patterns of services commitments across economies are relative to economic size and regulatory capacity (measured by level of bureaucracy).

(iii) On-going discussions

Services negotiations pursuant to Article XIX of the GATS were launched in 2000. Article XIX ("Negotiation of Specific Commitments") mandates WTO members to "enter into successive rounds of negotiations" with a view to "achieving a progressively higher level of liberalization". Members established negotiating guidelines and procedures and, in view of the additional guidance provided with the launch, in 2001, of the Doha Development Agenda (DDA) negotiations, they engaged in bilateral and plurilateral negotiating processes, and exchanged initial and revised offers of improvements to their schedules of commitments. However, negotiations

faltered when members proved unable to meet the timeline for agreeing on modalities on agriculture and on non-agricultural market access in 2006. The services "signalling conference" in 2008, at which a group of ministers exchanged indications on further improvements they could make to their schedules, marked the last significant development in services market-opening negotiations in the WTO. Differences over a special safeguard mechanism for agricultural products during negotiations in the summer of 2008 prevented a new effort to agree on modalities on agriculture and non-agricultural market access, and brought the entire DDA to an impasse. Since then, discussions of market-opening in services have been limited.

Most recently, in 2018, a group of members (Chile, Mexico, New Zealand, Panama) proposed that delegations engage in exploratory discussions on services market openings in the context of the Special Session of the Council for Trade in Services, the WTO body that oversees services negotiations. The objective is for delegations to exchange views on their current market opening interests, against the background of recent economic and policy developments, and without prejudice to positions on whether to hold negotiations.¹⁵

Services market-opening has also been discussed in the context of members' deliberations under the Work Programme on Electronic Commerce, particularly in recent years during its revitalization. Members circulated background documents outlining their priorities. In some cases, these submissions included, among many other things, references to the relevance of a services-related market opening component to improving the prospects for e-commerce. As a variety of members expressed the view that the Work Programme did not have a mandate for negotiations of either new rules or commitments, the question of market opening negotiations forming part of e-commerce work has now been taken up in the group of 70+ members participating in the informal discussions on e-commerce announced in a joint statement issued at the Buenos Aires Ministerial Conference in December 2017.

Most recently, as the participants in this open-ended Joint Statement Initiative (JSI)¹⁶ on electronic commerce agreed to move to a negotiating phase, some members have again made submissions urging that market-opening on services relevant to e-commerce be among the items to be negotiated by the group. Suggestions range from minimal, covering key e-commerce infrastructure such as telecommunications and computer services, to broad-based, covering cross-border supply (mode 1) for

many or most services or including all modes of supply for e-enabled services, bearing in mind, for example, that commercial presence (mode 3) and the presence of natural persons (mode 4) also play a role in e-commerce. One of the reasons that the negotiations of services market-opening commitments has been raised in the context of e-commerce is that there is a perceived need to improve upon commitments that date, for many members, back to 1995, with a view to bringing services schedules more into line with modern technological and commercial realities.

(b) International cooperation on lowering trade barriers in RTAs

(i) State of play

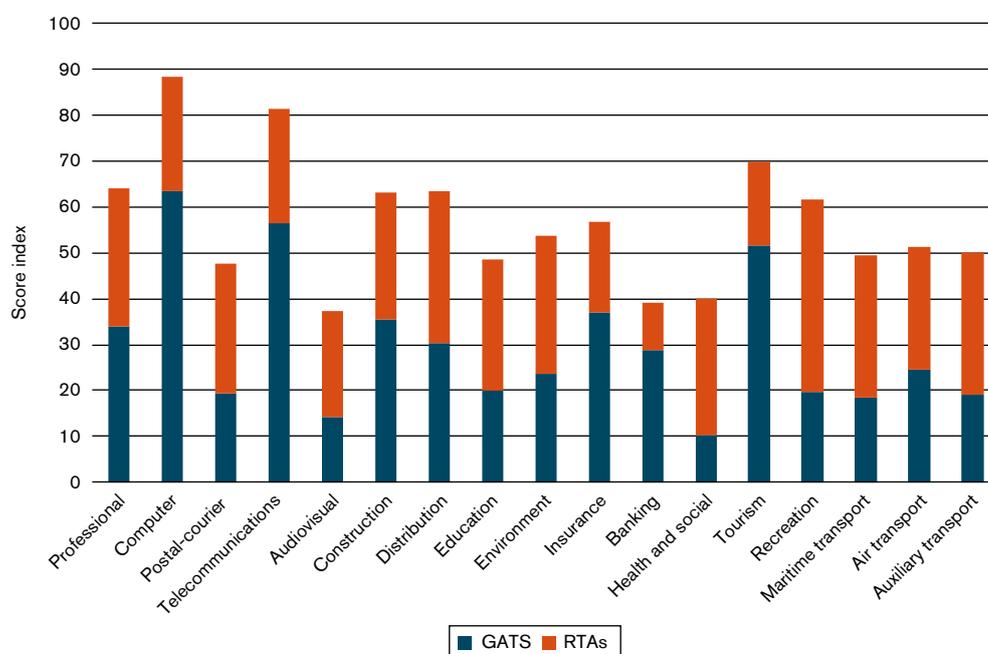
The modest state, overall, of commitments in the GATS stands in stark contrast with levels of bindings on services that have been achieved by various members in RTAs.¹⁷

Various studies have showed that parties to services RTAs tend, on average, to go well beyond the

commitments they had undertaken in the GATS, as illustrated in Figure E.8 (see also Roy et al., 2007; Marchetti and Roy, 2008; Fink and Molinuevo, 2008; Marchetti et al., 2012; Roy, 2014; Van der Marel and Miroudot, 2014). Overall, GATS+¹⁸ commitments in RTAs are significant across different sectors and modes of supply. This body of research shows how GATS+ commitments in RTAs vary across sectors, modes of supply, different regions and levels of development, as well as across agreements with different types of legal architecture, and examines the role of reciprocity in commitments among RTA parties in different sectors and modes of supply. Research focusing on determinants of the gap between GATS and RTA commitments on services find that such factors as the quality of governance, market size, skill endowments and asymmetries between parties are relevant in accounting for GATS+ commitments in RTAs (Van der Marel and Miroudot, 2014), while others emphasize that the coherence and level of restrictiveness of parties' regulatory frameworks, as well as the importance of parties' bilateral merchandise trade, have a positive impact (Shingal et al., 2018).

Figure E.8: RTA commitments go well beyond those undertaken in the WTO

Index of GATS+ commitments in services RTAs, by sector



Source: WTO Secretariat, May 2019.

Note: Based on commitments undertaken by 53 WTO members (counting the European Union (15) as one) in 67 services RTAs (Roy, 2014). The index score is brought within a scale of 0 to 100 for each sector, with 100 representing full commitments (i.e., without limitations) across all relevant sub-sectors. "GATS" reflects the index value for both GATS commitments and services offer in the DDA. "RTA" reflects the index value for a member's "best" RTA commitments across all its RTAs. The score for EU commitments is for the EC (15).

However, in contrast to merchandise trade, where RTAs typically bring down tariffs to 0 over time for most products traded, services RTAs are believed to provide for little new trade-opening in practice, despite some important exceptions (see Roy et al. (2007) for examples).¹⁹ Rather, services RTAs have tended to bind existing levels of access and non-discrimination to a much greater extent than under the GATS. This is the case for a number of RTAs that follow a GATS-type approach to the scheduling of commitments. But in recent years, an increasing number of RTAs follow, at least in part, a different scheduling approach – called negative-list – whereby all covered services are deemed fully open, unless specified otherwise in a list of reservations for non-conforming measures that is annexed to the RTA in question.²⁰ By the end of 2018, 40 per cent of services RTAs were using a positive-list approach, while the rest were using a negative-list approach, in whole or in part (Gootiiz et al., 2019).

Negative-list RTAs usually provide that reservations be undertaken for “existing” measures that do not conform with certain provisions of the agreement (e.g. market access, national treatment). This suggests as default that applied levels of openness at the time of the signing of the agreement be bound.²¹ In addition, negative-list agreements often include a so-called “ratchet mechanism”, which provides that any future liberalization (autonomous or otherwise) of existing non-conforming measures will be automatically bound. The use of such “negative list” modalities in RTAs have tended to produce commitments that significantly reduce the gap between applied and bound levels.

Members’ market-opening commitments in RTAs will typically differ from their GATS commitments, but also vary across a given party’s different RTAs. While different bindings are undertaken, and different guarantees of access are provided to suppliers of different members, unlike in the case of goods, this does not necessarily imply that actual preferences are applied and that foreign suppliers will be subject to different measures on the basis of their origin. Given their nature (inside the border measures that are often embedded in domestic regulatory frameworks), services trade measures are usually applied on an MFN-basis, even though there are exceptions (e.g., foreign direct investment (FDI) screening thresholds in a number of jurisdictions). Domestic resistance to multilateralizing commitments undertaken in RTAs should, in principle, be low, and the potential for RTA commitments to facilitate, rather than hinder, MFN-based multilateral commitments should be greater in services than in merchandise trade.

(ii) Determinants of services RTAs

Some work has been undertaken on the determinants of economies’ willingness to negotiate RTAs covering services trade with each other. Cole and Guillin (2015) find significant evidence that the “natural trading partner hypothesis”, i.e. similarity in terms of economic size and relative factor endowment differences between partner economies, increases the propensity to negotiate a services agreement. Egger and Shingal (2014) observe that regulation is an important determinant of membership of a services RTA, and find that economies displaying greater convergence of services policies and less restrictive regulation are more likely to sign an RTA with each other. Building on previous research works, Sauvé and Shingal (2016) and Shingal et al. (2018) find that economies with high pre-existing levels of bilateral merchandise trade are more likely to negotiate services agreements with each other, which they take as confirmation of the rising complementarity between goods and those services that foster goods trade, especially in those regions, like Asia, that are increasingly integrated in global value chains (GVCs).

When it comes to the decision to engage in preferential services negotiations, Marchetti and Roy (2008) posit that RTA commitments were driven by disappointment with the DDA negotiations and concerns about free-riding.²² Adlung and Roy (2005) argue that political support for bilateral trade agreements might have helped overcome the substantial obstacles that emerged during multilateral services negotiations, such as the resource constraints faced by smaller economies in engaging in complex negotiations or the institutional resistance from many non-trade ministries responsible for services trade policy-making. Hoekman et al. (2007) note that bilateral deals may entail commercial gains for service exporters that can be perceived more clearly in comparison with multilateral agreements, thereby capturing the attention of political interests.

(c) International cooperation on domestic regulatory measures at the WTO

(i) State of play

As Box E.2 shows, existing domestic regulatory provisions in the GATS are rudimentary and limited to a small number of transparency and good governance obligations. However, it is important to note the dynamic elements incorporated into the GATS, as its drafters conceptualized it as a core building block for progressive liberalization: the GATS contains a

built-in mandate to engage in successive rounds of negotiations with the purpose of lowering trade barriers, as well as converging on pro-competitive good regulatory practice, which can be bound through additional commitments.

In addition, recognizing the potentially trade-restrictive effects of domestic regulatory measures, WTO members agreed on the need to develop specific disciplines to ensure that certain government regulations are not unduly trade-restrictive. The result was Article VI:4 of the GATS, which mandates the development of “any necessary disciplines” to ensure that certain types of regulation (i.e. licensing requirements and procedures, qualification requirements and procedures, and technical standards – so-called “GATS domestic regulation”) do not constitute unnecessary barriers to trade in services. Importantly, the Article VI:4 mandate is not intended to launch a de-regulatory process, or to seek harmonization between regulatory systems, but rather to promote good practices in regulation that would allow members to realize any of the policy objectives they seek to achieve.

Following the negotiating track to develop domestic regulatory disciplines under Article VI:4, WTO members decided to focus first on the accountancy sector. The negotiations resulted in the “Guidelines for Mutual Recognition Agreements or Arrangements in the Accountancy Sector” (May 1997), followed by the “Disciplines on Domestic Regulation in the Accountancy Sector” in December 1998.

The Guidelines, which are voluntary, were developed to provide practical guidance for governments, negotiating entities or other entities entering into mutual recognition negotiations on accountancy services. They recognize that differences in education and examination standards and experience requirements, amongst others, make implementing recognition on a multilateral basis extremely difficult. They set out a checklist of items that would lead to greater transparency in the negotiation, conclusion and substance of mutual recognition agreements, and promote a degree of similarity between the agreements that would facilitate the extension of mutual recognition more broadly.

The Accountancy Disciplines provide a set of rules that ensure that domestic regulatory measures related to licensing, qualifications, and technical standards in the accountancy sector are not prepared, adopted, or applied with a view to or with the effect of creating unnecessary barriers to trade in accountancy services. For this purpose, measures must be no more trade-restrictive than necessary

to fulfil a legitimate objective. The Accountancy Disciplines, which are meant to apply to members with liberalization commitments in the sector, comprise enhanced transparency obligations on publication and public availability of measures and requirements to inform other members, upon request, of the rationale behind regulatory measures in the accountancy sector. The Accountancy Disciplines introduce, for the first time in a trade in services context, a best endeavour obligation on members to provide opportunity to comment on draft regulatory measures. Licensing requirements and procedures are to be pre-established, and objective, and fees need to reflect administrative costs involved. Foreign-obtained qualifications are to be taken into account on the basis of equivalency of education, experience and/or examinations. Technical standards are to be developed and used only to fulfil legitimate objectives, and international standards are to be taken into account in determining the necessity of regulatory measures.

Members decided to integrate the Accountancy Disciplines into the GATS no later than at the conclusion of the mandated round of services negotiations, with members agreeing not to enact new measures inconsistent with the disciplines in the future.

Another instance of WTO members converging on good regulatory practices was the “Reference Paper on regulatory principles for telecommunications”, which was drafted during the WTO negotiations on basic telecommunications (1995-97) and supplements market access and national treatment commitments in this sector. It was the product of close collaboration between trade officials and telecommunications ministry and regulatory officials.

The “Reference Paper on regulatory principles for telecommunications” contains six sections, with provisions covering regulatory obligations on competitive safeguards, interconnection, universal service, licensing, independence of regulators, and allocation and use of scarce resources (frequencies, numbers and rights of way). Negotiators agreed on disciplines regarding competitive safeguards and the closely related interconnection guarantees essentially because it was obvious that newly reformed telecommunications regimes would be characterized by a dominant supplier, typically the former monopoly. An important feature of the universal services obligations was also that any mechanism used to achieve these objectives should be implemented in a competition-neutral manner. In this sense, such provisions were expansions on the relevant disciplines in the GATS addressing monopoly and exclusive

suppliers (Article VIII) but applied to dominant suppliers in this sector. The provisions on licensing, independent regulators and scarce resources are more closely aligned with the type of provisions found in GATS Article VI, on domestic regulation, calling for impartiality and non-discrimination, and in GATS Article III, on transparency.

At the close of the negotiations on basic telecommunications, 57 governments included, as additional commitments in their GATS schedules, the Reference Paper, in whole or with minor modifications, and six members scheduled at least some elements of it. These entered into force in 1998. Today, as a result of accessions and unilateral improvements submitted by existing members, 101 WTO member governments subscribe to the Reference Paper in their respective schedules, with 94 of these members having taken it on in full, or with only minor modifications.

(ii) On-going discussions

Currently, on-going discussions on regulatory aspects in the WTO focus mostly on three areas: GATS domestic regulation, electronic commerce and the relevant aspects of investment facilitation.

Starting with GATS domestic regulation, further to the adoption of the Accountancy Disciplines, members decided to work towards developing generally applicable disciplines in the Working Party on Domestic Regulation (WPDR), while at the same time also considering developing disciplines for individual sectors or groups thereof.

Subsequent negotiations concentrated on disciplines applicable to all sectors, and members' proposals have been distilled into a number of Chairman's draft texts, comprising disciplines to enhance transparency, and to ensure that authorization processes provide for efficient procedures (e.g. allowing electronic submission, and ensuring processing of applications without undue delays), including reasonable fees. These drafts also provide disciplines requiring regulatory measures to be based on objective and transparent criteria and decisions to be reached and administered independently from other suppliers, and through adequate and impartial procedures.

Discussions in the WPDR stalled in 2011. They were revived in 2016, but further draft proposals submitted at that time, and with similar substantive elements, failed to gain sufficient acceptance among all members to become a basis for a consensus-based outcome.

In light of the opposition encountered, since the beginning of 2018, a group of 60+ WTO members have been pursuing discussions to advance a negotiating text outside the dedicated negotiating forum, in meetings open to all WTO members now referred to as the Joint Statement Initiative on GATS domestic regulation. By early 2019, the group was close to agreeing on a full set of substantive disciplines. At the time of writing, it had not been clarified how the group would give legal effect to the agreed outcome.

Turning to electronic commerce, substantive discussions are taking place under the multilateral WTO Work Programme on Electronic Commerce and in an informal group of members, referred to as the Joint Statement Initiative on e-commerce. In the Work Programme, the implications of continuing the long-standing moratorium on customs duties on electronic transmissions is under consideration. In the Joint Statement group, deliberations are exploring a number of areas of regulation that are considered to be important in putting in place a sound regulatory framework for e-commerce. The difference between the Joint Statement Initiative and the Work Programme is that participants in the Initiative are hoping to agree on a set of provisions on regulatory issues, and possibly scheduling Information Technology Agreement-related or GATS market-opening commitments that would be undertaken, if not multilaterally, then plurilaterally.

The kind of regulatory issues under consideration in the Joint Statement group, many of which were also flagged in the Work Programme, concern, for example, online consumer protection, recognition of electronic contracts and electronic signatures, unsolicited emails, cybersecurity and technology transfer, to name a few. Similarly to some provisions currently found in many RTAs, the types of provisions Joint Statement participants generally call for are ones in which governments agree to ensure that they have or will put in place laws or regulations relevant to these areas of concern. Also, similar to related RTA provisions, the rules suggested by participants are not prescriptive in nature about what exactly these laws and regulations should contain, but there is an underlying assumption that they need to be consistent with GATS principles such as transparency, impartiality and non-discrimination. Some participants have also called for greater transparency, or even prior publication and comment on new rules and regulations, not unlike proposed texts on GATS domestic regulation. Enhanced collaboration and consultation among relevant regulators on the various e-commerce regulatory topics has also been proposed.

Finally, turning to the relevant aspects of investment facilitation, the Joint Ministerial Statement on Investment Facilitation for Development, signed by 70 WTO members, calls for “beginning structured discussions with the aim of developing a multilateral framework on investment facilitation”, which shall “seek to identify and develop the elements of a framework for facilitating foreign direct investments [...]”. The Joint Statement clearly establishes that “these discussions shall not address market access, investment protection, and Investor-State Dispute Settlement”, and encourages all WTO members to participate actively in the initiative.

Following the Joint Statement, participating members have identified, and are further developing, the possible elements of the framework aimed at (i) increasing the transparency and predictability of investment measures; (ii) streamlining and speeding up administrative procedures and requirements; (iii) enhancing international cooperation, information-sharing, the exchange of best practices, and relations with relevant stakeholders, including dispute prevention; and (iv) facilitating greater developing and least-developed members’ participation in global investment flows. As Box E.5 discusses, measures affecting FDI in non-services sectors have also been found to be determinants of services trade.

(d) International cooperation on domestic regulatory measures in RTAs

RTAs have also made inroads into developing disciplines on services regulatory measures, in particular in services e-commerce, GATS domestic regulation, mode 4 and telecommunication services. This section provides an overview of RTA provisions concerned with these issues.

(i) *Services e-commerce*

One of the aims of RTA provisions on e-commerce is to encourage trading partners to put in place a regulatory framework conducive to online trade, which has become an increasingly common means of trading services. Currently, at least 75 RTAs (of those notified to the WTO) have dedicated provisions or a chapter on electronic commerce. Both developed and developing economies have concluded RTAs that address e-commerce: approximately 63 per cent are agreements between developed and developing economies and 33 per cent are between developing economies (Monteiro and Teh, 2017).

Relevant domestic regulatory measures are addressed in more than half of the RTAs that have

e-commerce provisions, particularly the more recently negotiated agreements. This can include provisions of a general nature concerning transparency, minimizing regulatory burdens, maintenance of relevant laws and regulations and open consultations. More specific provisions relate to domestic regulatory issues, such as consumer protection, data protection, paperless trading and unsolicited messages. However, there is wide variation in the RTAs concerned as to whether their provisions involve binding obligations or best-endebour language (the latter generally encourages parties to put in place the relevant legal frameworks for online trade). Many of the RTA provisions on e-commerce call for greater collaboration among the parties on such regulation, which presumably means collaboration among the relevant authorities in the different areas of regulation concerned.

Finally, it is worth noting that if a services RTA does not have provisions on e-commerce, this does not mean that electronic trade in services does not fall within the scope of that particular RTA, as many of its commitments, as noted earlier, may improve upon those in the GATS, for example on the cross-border supply of services that can be provided online. Likewise, any overall provisions on domestic regulation would apply to e-commerce in agreements that do not have e-commerce provisions or, if they do, the e-commerce provisions would complement provisions or chapters that spell out obligations on domestic regulation.

(ii) *Building on GATS domestic regulation*

Building on the GATS, RTAs generally include disciplines on services regulatory measures. The majority of RTAs notified to the WTO in the last 10 years include disciplines that go beyond the GATS (i.e. GATS+). The number and degree of such disciplines varies across RTAs. In addition, since the sectors committed in RTAs extends far beyond those bound in the GATS, RTA provisions apply de facto to many more services sectors.

GATS+ provisions are found in RTAs involving developed and larger developing or emerging economies, as well as in many RTAs amongst developing economies. Moreover, provisions of a similar kind are found in RTAs comprising the same parties. Not surprisingly, the latest RTAs, including so-called “mega regional” RTAs such as the CPTPP or the Comprehensive Economic and Trade Agreement (CETA), include more GATS+ features.

GATS+ elements feature prominently in regulatory transparency and disciplines on administrative

Box E.5: FDI as a determinant of trade in services

Global investment and trade are inextricably intertwined through the international production networks of multinational enterprises, which fragment their production processes into different components in various locations, and their trade inputs and outputs into global value chains of various degrees of complexity (UNCTAD, 2013). Discussions, as well as the literature, on international cooperation in services trade tend to focus on policies directly affecting trade in services, including via commercial presence (mode 3 of the GATS). Thus, discussions generally focus on the policies and regulations affecting the ability of foreign services exporters either to export services to or to invest and establish a commercial presence in host countries. However, manufacturing FDI is important for services traded both on a cross-border basis and through commercial presence.

An increasing body of research makes the case that trade in services, particularly through commercial presence, is related to – and dependent upon – FDI in manufacturing. Looking at 57 economies over the period 1989 to 2000, Kolstad and Villanger (2008) find that FDI in manufacturing is a robust determinant of FDI in certain infrastructure services, in particular finance and transport, but is insignificant for FDI in other types of services industries such as retail trade. This result is consistent with the idea that infrastructure services such as finance and transport bind together a globally integrated chain of production.

Evidence from firm-level data also points in the same direction: the location choices of manufacturing and services firms are interdependent. For example, when analysing the choices of French business services firms over the period 1997 to 2002 of foreign locations in which to establish affiliates, Nefussi and Schweltnus (2010) find evidence of strong complementarity: affiliates of French business services firms tended to be located where French manufacturing affiliates were in order to meet the demand for services of the latter. This complementarity depends on strong input-output linkages between the two sectors, manufacturing and business services. A similar study by Armenise et al. (2011) on the location determinants of Italian FDI in business services over the period 1995 to 2005 finds that such complementarity depends on the service concerned. Their results show a positive association only between manufacturing FDI and telecommunications FDI by Italian firms.

Ramasamy and Yeung (2010), looking at OECD countries over the period 1980 to 2003, also find strong empirical support for complementarity between services FDI and manufacturing FDI. In addition to the typical agglomeration effect (FDI attracts FDI), they find that services FDI tends to follow manufacturing FDI, in order to serve home-based customers in host countries. As they conclude in their study, “manufacturing FDI is the single most important determinant of services FDI.” The same follow-the-client hypothesis is confirmed by Cazzavillan and Olszewski (2012) for nine economies (i.e. Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, the Slovak Republic and Slovenia) between 1996 and 2007, and by Falck (2014) for Sweden over the period 2002 to 2009.

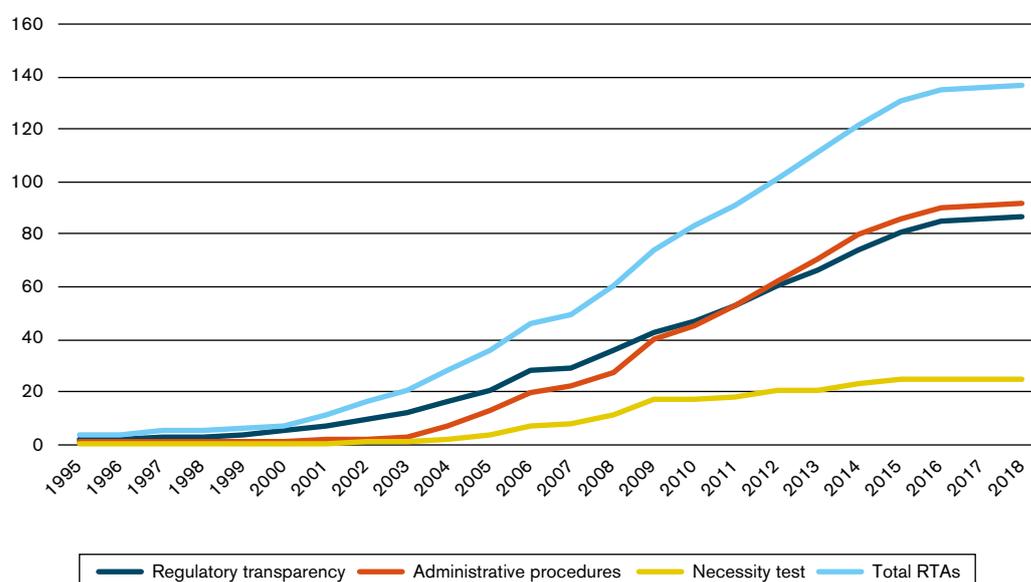
FDI (including in non-services sectors) has been found to be a strong determinant of services exports. Eichengreen and Gupta (2013) find such an association between FDI inflows and services exports in 60 emerging market – including India, the focus of their study – over the period 1990 to 2008. A positive and significant association between FDI inflows and services exports in 13 selected Asian economies is found by Ahmad et al. (2018). Sahoo and Dash (2017) also ascertain that inward FDI has a positive impact on exports from India of such services as software, business services, financial services and communications. Studying the different modes of supply for US exports of services, Christen and Francois (2015) find a positive effect of manufacturing FDI on affiliate activity for some services sectors in US outward sales, in particular business services. This result, in the authors’ view, supports the findings on positive interaction between FDI in manufacturing and business services previously found in the economic literature, e.g. Gage and Leshner (2005), Francois and Woerz (2008), and Egger et al. (2015).

procedures. As shown in Figure E.9, the number of RTAs including GATS+ elements has increased significantly since 2000. In many RTAs, the same transparency disciplines apply horizontally to both goods and services, with services chapters

building on them. This is in stark contrast to WTO disciplines on regulatory transparency, which are more far-reaching for trade in goods (e.g. under the Technical Barriers to Trade (TBT) Agreement, the WTO Agreement on the Application of Sanitary

Figure E.9: GATS+ provisions on domestic regulatory measures have increased

Number of RTAs with GATS+ disciplines on services domestic regulatory measures



Source: WTO Secretariat calculations based on data extracted from Gootiiz et al. (2019) (based on 137 RTAs notified to the WTO from 1995 to 2018).

and Phytosanitary Measures (SPS Agreement) or the Trade Facilitation Agreement (TFA) than those applying to services under the GATS. The latter seems at odds with the regulatory intensity of services.

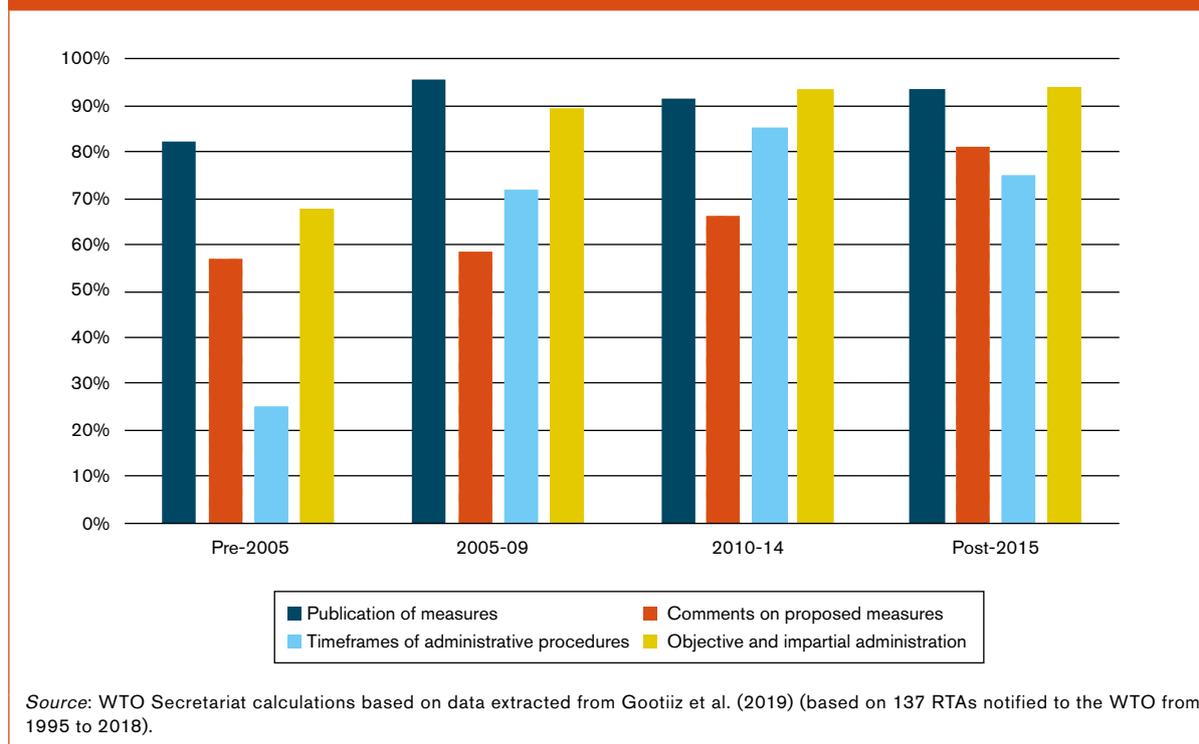
One notable trend in RTA disciplines on regulatory transparency is the emphasis put on making measures available to stakeholders at different stages of the regulatory cycle, which is absent in the GATS, and had first been developed in the Accountancy Disciplines. As shown in Figure E.10, around 80 per cent of RTAs notified in 2015 provide an opportunity for “interested persons” to comment on “proposed” measures.²³ Receiving inputs from stakeholders during the regulatory process may contribute to facilitating trade by reducing unintended effects and helping services suppliers adapt to changing requirements. Likewise, responding to requests for information on measures from “interested persons” features in many RTAs.²⁴ A second trend relates to the requirement to make available specific information on procedures and requirements applicable to services sectors.²⁵ A third trend relates to the increasing number of references in RTAs concerning the use of ICT for enhancing the transparency of trade regimes, for instance by making measures and information electronically available through official websites.²⁶

However, notification obligations are found only in a few RTAs, possibly because notification at the multilateral level is preferred.

Another important cluster of GATS+ provisions relates to administrative procedures for the authorization to supply a service, which aim at enhancing the clarity, predictability and efficiency of such procedures. Around 90 per cent of RTAs notified require that applications be processed within certain timeframes or that indicative time periods be provided (see Figure E.10).²⁷ As to the treatment of incomplete applications, RTAs mandate that the applicant be informed of the additional information required to complete the application, provided with the opportunity to correct minor errors or omissions²⁸ and, in case of rejection, given an opportunity to resubmit.²⁹ RTAs also require authorization fees charged by competent authorities to be reasonable or not, in themselves, restrictive of the supply of a service.³⁰ Disciplines on examinations for the assessment of qualifications for obtaining licences can also be found in recent RTAs (e.g. scheduling examinations at reasonable intervals).³¹ Some recent RTAs provide for the electronic submission of applications.³²

Figure E.10: RTAs progressively include more regulatory provisions

Percentage of RTAs covering selected provisions



A second group of RTA disciplines focuses on minimum standards applicable to administrative procedures, such as requiring the objective and impartial administration of procedures,³³ the independence and impartiality of competent authorities deciding on authorizations, and the right to prompt review of administrative decisions.³⁴

As with WTO negotiations on GATS domestic regulation, in RTAs members also have been less inclined to submit the substantive aspects of their licensing and qualification regimes to further disciplines. Whereas disciplines on procedural aspects aim to tackle the efficiency of administrative procedures, members have shown the desire to maintain more autonomy with regard to disciplines on substantive requirements about the content and quality of regulations. While a considerable number of RTAs include basic principles such as the obligation to apply objective and transparent criteria, the requirement that licensing and qualification requirements are not more burdensome than necessary (so-called “necessity-test”) is present in less than 25 RTAs (see Figure E.9).³⁵ A number of RTAs include a provision requiring the parties to review the agreement in light of the results of WTO negotiations on GATS domestic regulation possibly as a way of reducing regulatory fragmentation.

As to disciplines on the recognition of services sectors qualifications, 95 per cent of RTAs include a provision on MRAs.³⁶ Most of them are based on Article VII of the GATS and in many cases they foresee the possibility for the parties of concluding MRAs in the future, in some cases identifying priority professional services sectors (e.g. accountancy, engineering or architecture).³⁷ More recent RTAs encourage the parties to consult with their relevant bodies to develop recommendations on proposed MRAs,³⁸ or in some instances, to encourage the relevant bodies from the parties to exchange information with the aim of entering into negotiations on MRAs for identified sectors based on pre-established guidelines,³⁹ in both cases making MRAs subject to the review of the RTA bodies.⁴⁰

Some recent RTAs include innovative provisions aimed at promoting regulatory coherence and cooperation throughout the regulatory cycle.⁴¹ The aim is to improve the quality and efficiency of regulations, while reducing regulatory divergence. Regulatory coherence and good regulatory practices focus on improving domestic coordination among relevant authorities, conducting public consultations on and preparing impact assessments of proposed regulations, and periodic review of regulations.⁴² Cross-border cooperation among regulatory

authorities relates to the exchange of good regulatory practices, information-sharing on planned and existing measures, and cooperation in regional fora.⁴³ Both rely on enhancing transparency, which may be deemed a pre-condition for further regulatory coherence and cooperation. These provisions are of a cross-cutting nature, providing the possibility to exclude certain measures. They sometimes constitute “soft law” (i.e. they are not legally binding) or are excluded from the RTA dispute settlement mechanism (i.e. they are not subject to adjudication).

Many RTA provisions use “best endeavour” language (i.e. “to the extent practical” or “to the extent possible”). This may be explained by different reasons, such as the scope of the provision at issue (e.g. whether it applies to all levels of governments or only at the central level, or to some or all sectors), the degree of GATS+ elements, and the level of regulatory capacity of the economies involved. Parties may also find value in including GATS+ disciplines using best endeavour language as a means of improving their regulatory environment to further facilitate trade. While such language is found in RTAs concluded by both developed and developing economies, it is more prevalent in RTAs involving developing countries and where the RTAs include more far-reaching disciplines. The inclusion of such

language may also be seen as part of the natural evolution of international agreements, where new disciplines are introduced first in soft terms, up to a point where those practices become more familiar and strengthened provisions are warranted.

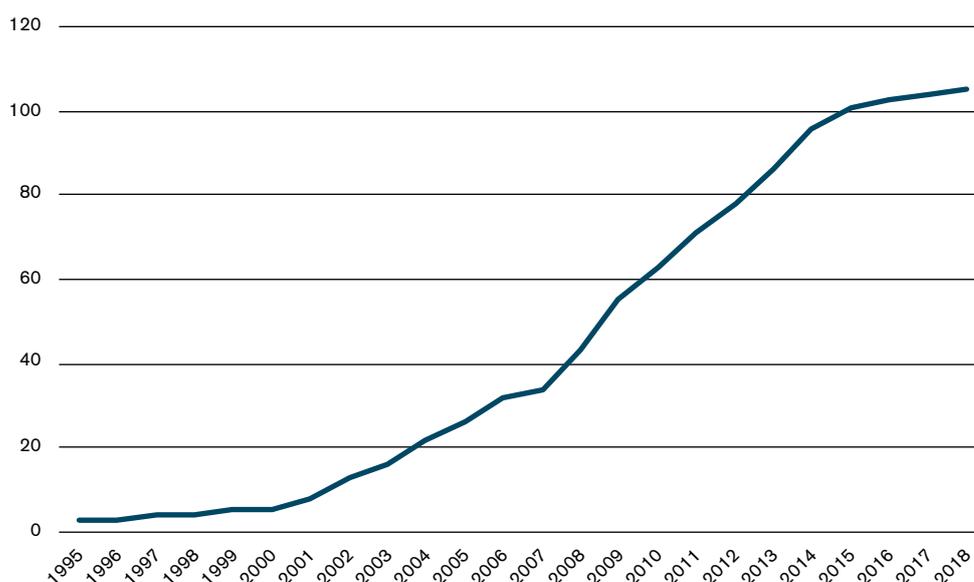
(iii) Presence of natural persons (mode 4)

As stipulated in the GATS,⁴⁴ all RTAs must cover all modes of supply, including mode 4. Traditionally, RTAs only tackled mode 4 trade from a market opening perspective. In that regard, they provide some advances compared to the commitments undertaken in the GATS, but the progress they achieve is, overall, rather mediocre (Carzaniga, 2008).

However, more recently, RTAs have started to incorporate regulatory disciplines related to mode 4 that are aimed at facilitating such trade. These disciplines generally go beyond the obligations contained in the GATS. As Figure E.11 shows, the number of RTAs that contain mode 4-specific provisions has been growing steadily. Although these numbers exclusively reflect the existence of provisions specific to mode 4, generally in separate chapters or annexes, and do not account for the substantive elements therein, they nevertheless point to the increased attention that mode 4 regulatory issues have attracted in RTAs concluded over the past 10 years or so.

Figure E.11: Mode 4 provisions in RTAs are on the rise

Number of RTAs with mode 4-specific provisions



Source: WTO Secretariat calculations based on data extracted from Gootiiz et al. (2019) (based on 137 RTAs notified to the WTO from 1995 to 2018).

When it comes to the substantive mode 4 elements addressed in RTAs, disciplines regarding the setting of visa fees are those encountered most frequently. Fees are variably required to be “reasonable and in accordance with domestic laws”,⁴⁵ “not unduly impairing or delaying trade”⁴⁶ or “based on the approximate cost of services rendered”.⁴⁷ The second most frequently found type of mode 4-related disciplines relates to limiting recourse to the dispute settlement mechanisms of the RTAs to situations where there is a practice of rejecting applications and after local administrative remedies have been exhausted. This is followed by disciplines relating to the handling of visa and work permit applications, which are mandated to be processed “expeditiously”,⁴⁸ “promptly”⁴⁹ or within given time-limits,⁵⁰ varying between 10 and 45 days.

In roughly half of the RTAs containing mode 4 regulatory disciplines, the parties are also mandated to inform visa and/or work permit applicants of the outcome of their application. In around half of the RTAs concerned, material relevant to such applications, or any changes thereto, are also required to be published “promptly”,⁵¹ “without undue delay”,⁵² or within a set timeframe.⁵³ Finally, about one-third of these RTAs provides for the establishment of contact points, to facilitate governments’ or applicants’ access to relevant information.

(iv) Telecommunications

RTAs have increasingly included standalone chapters on telecommunications that draw extensively on the GATS Annex on Telecommunications and “Reference Paper on pro-competitive regulatory principles” in the sector and add provisions on new regulatory topics. As with the GATS provisions, the RTA regulatory topics are also most commonly oriented toward expanding on ways to promote and preserve a healthy competitive environment. For this reason, some of the provisions on new topics may more explicitly cover or clarify issues dealt with in a more generic manner in the Telecommunications Annex and Reference Paper. Examples of this are the provisions calling for number portability and pro-competitive practices in the mobile services sector.

Currently, 101 RTAs have standalone chapters on telecommunications services. Another approach, found in 12 RTAs, is a provision in the services chapters that incorporates, by reference, the GATS Annex on Telecommunications as integral to provisions of these RTAs. Both developing and developed economies participate in one or more of the RTAs that have a standalone chapter on telecommunications. High-income and upper-middle-income economies amount to 84 per cent of all WTO

members participating in RTAs with a standalone chapter on telecommunications. Overall, high-income countries represent 61 per cent of all WTO members participating in RTAs with a chapter on telecommunications, compared to 25 per cent and 13 per cent for upper-middle-income and lower-middle-income countries, respectively.

(e) Work in other international organizations

The work of many international organizations (IOs) is relevant to services trade. These IOs offer a governance framework, mostly along sectoral lines, for countries to cooperate with each other on rules that are pertinent for services. Such cooperation does not address trade barriers per se, but is focused on developing, disseminating and adopting a common approach with regard to sectoral domestic regulations that, although formally unrelated to trade, may nevertheless have a trade impact. Indeed, while the WTO, and trade agreements more generally, do not set the substance of regulatory norms, cooperation on these takes place amongst regulators in specialized international bodies. That there is a wide range of IOs that deal with, or whose activities are pertinent to, services industries is largely a reflection of the regulatory intensity of this sector.

While an exhaustive account of the work in all relevant IOs would be beyond the scope of this Report, what follows is a brief description of their main pertinent areas of activity. Appendix Table E.1 offers some more detail. This section confines itself to specialized IOs with universal membership. It is essential to acknowledge, however, the significant and extremely valuable work undertaken in the area of services trade by universal, non-sectoral IOs, such as the World Bank, the United Nations Conference on Trade and Development (UNCTAD) or the International Trade Centre (ITC), regional organizations and fora, such as the Organisation for Economic Co-operation and Development (OECD) or the Asia-Pacific Economic Cooperation (APEC), and other relevant specialized bodies of a non-universal nature.

The activities carried out by IOs generally affect services trade through two channels: the establishment of international standards and the promotion of recommended practices. Whereas standards commonly refer to “necessary” requirements of services to pursue safety or quality objectives, the application of recommended practices is considered as “desirable” in the interest of safety, regularity and efficiency of services activities. Examples include the Standards and Recommended Practices developed by the International Civil Aviation Organization (ICAO), the Standards and Recommended Practices set out by the International

Box E.6: Trade in services and health worker mobility

Parallel to the changing demographics, the number of jobs in the health sector is growing. Across OECD countries, employment in health and social work grew by 48 per cent between 2000 and 2014. In addition, the global economy is projected to create an additional 40 million jobs for health workers by 2030, primarily in middle- and high-income countries. Concurrently, the international mobility of health workers is accelerating. Over the last decade, the number of foreign doctors and nurses working within OECD countries has increased by 60 per cent (OECD, 2015). The patterns of international health worker mobility are also growing in complexity, with substantial intra-regional, South-South, and North-to-South movement, alongside better understood movement of health workers from South to North (WHO, 2017).

Although still largely unused, there is potential in the international trading system to maximize benefits from health worker mobility while protecting the system against adverse effects (e.g. skill-drain, overstay of health professionals). Trade in services frameworks (global, regional and bilateral agreements) have resulted in the development of ways to facilitate and manage health worker mobility, and in specific cases have evidenced the ability to bring together a variety of national interests (e.g. education, foreign affairs, health, labour and trade) related to health worker mobility. The frameworks contain flexibility to strengthen and advance ethical health worker mobility. This is consistent with the World Health Organization (WHO) *Global Code of Practice on the International Recruitment of Health Personnel* which was adopted in 2010 by the 63rd World Health Assembly. The aim of the Global Code is to regulate the migration and movement of healthcare workers from areas that need them the most. This is achieved by means of a “health labour market analysis”. However, further analysis is required to identify how best to leverage trade rules to meet the needs of countries of origin, destination countries and health workers.

Trade agreements and the WHO Global Code could be mutually reinforcing, with positive language from trade agreements replicated in targeted bilateral agreements on health workers. It would be useful, for instance, to analyze further how recognized and harmonized “health labour market analysis”, in both origin and destination countries, could be used to complement or supplement the “economic needs test/labour market tests” used in trade agreements. This could potentially contribute to opening up trade in services further, by better targeting demonstrated needs.⁵⁴ Concerns related to “brain drain” would also need to be addressed. Applying economic needs tests for this purpose could provide confidence at the national and sub-national levels that opening up services trade benefits, rather than harms, socio-economic advancement. The potential to incorporate provisions to support international technical cooperation and financial assistance with respect to health personnel education in RTAs also holds important promises.

However, a number of issues would need to be addressed if the full benefit from trade in services agreements in this sector is to be felt, for example identifying the extent to which behind-the-border measures, as well as immigration-related requirements, can affect mode 4 health services trade; using trade dialogue to inform domestic regulation and policy in this sector; taking advantage of the health services commitments in mode 4 in GATS and RTAs to provide opportunities for greater temporary movement of qualified health workers; and strengthening the links between trade in educational services and international health worker mobility (Carzaniga et al., 2019).

Maritime Organization (IMO), the standards developed by the International Telecommunication Union (ITU) and the best practice guidelines issued by the ITU's Global Symposium for Regulators. Box E.6 provides an illustration, drawn from the health services sector, of how mutually reinforcing the activities of IOs and trade agreements can be.

International standards, usually designed by standardizing bodies of IOs and adopted by consensus, may be more binding for the countries involved than recommendations, which require countries to make only a best effort to conform. However, most standards are offered for adoption

by standardizing bodies without being mandated by law. Only the inclusion of a particular standard into legislative frameworks makes adherence to the standard mandatory, and such mandatory compliance is often undertaken in order to address public health, safety and environmental issues.

Standards and recommended practices specify the characteristics of a service and the manner in which it should be produced. They are used in services sectors to fulfil different functions that typically impact on market openness and trade in specific sectors, although, in comparison to goods standards, their utilization is more limited.

First, as networked services often need to be used together, governments require standards that promote compatibility and interoperability, as this can stimulate economies of scale (i.e. network effects), increase market efficiency and competition. These standards typically define the equipment or interfaces to be used in the supply of a given service. For instance, in the telecommunications sector, the ITU develops standards for protocols to allow networks to communicate with each other. Another example of how standards can integrate separate markets and open up competition comes from the transport sector and is represented by standardized railway tracks, which allow commercial railway operators to move their trains across borders. These standards have also been adopted in the postal services sector, to interconnect the global postal network. The Universal Postal Union's Standards Board develops the technical standards and electronic data interchange message specifications to facilitate the exchange of operational information between national postal systems.

Second, standards can reduce the information asymmetry between service suppliers and consumers by providing a minimum guarantee of services safety and quality. This represents a core issue for services and services trade, as their non-tangible nature means that a quality assessment of the service prior to its actual consumption is not possible, and it also compounds the general lack of consumer expertise to evaluate technical information on services. Therefore, service providers' observance of widely recognized and accepted quality standards can help distinguish their services as well as reduce information and transaction costs.

Third, standards can address negative externalities that may not be considered by either suppliers or users, thereby providing incentives for international cooperation on various topics. The World Tourism Organization, for instance, has proposed a Global Code of Ethics for Tourism, which defines a non-binding set of principles to guide key players in tourism development. It aims to help maximize the sector's benefits and facilitate international tourism flows while minimizing the potentially negative impact on the environment, on cultural heritage and on societies. Another example is the international standards that have been adopted to reduce greenhouse gas emissions in the transport sector.⁵⁵

The implementation of international standards and guidelines set by IOs may decrease transaction costs and improve the access of service suppliers to distribution channels and information networks, thereby facilitating their participation in international

trade. However, it is also generally recognized that participation in standard-making at the international level is costly, and developing countries face particular capacity constraints. Service providers from developing countries may find themselves in a weaker position to participate in international transactions. In order to overcome these challenges, in areas where standards are more prevalent than services, initiatives have been developed to ease the impact of certain provisions on developing countries and support their capacity to implement international standards, guidelines and recommendations.⁵⁶ The extent to which similar initiatives might also be necessary with regard to services is an open question.

4. Prospects for future cooperation

(a) Trade agreements have found it difficult to drive services trade reforms

As Section E.3(a) has illustrated, to date the GATS has yet not fulfilled its potential to open markets for services trade, with the notable exception of those members that have joined the WTO since 1995 and the phased-in commitments made during the extended negotiations on basic telecommunications and on financial services in 1995-97. While it might be tempting to attribute this to the impasse in WTO negotiations or shortcomings in the GATS itself, the difficulty is more widespread: also RTAs have not generated substantial improvements compared to whatever opening had been achieved unilaterally. Whether at the WTO or in preferential settings, trade agreements have not generally opened services markets beyond the applied status quo regimes.

This may come as a surprise. By allowing for reciprocal exchanges, trade negotiations are intended to help governments to overcome the resistance of private interests that gain from trade protection by giving a voice to exporters seeking better access to foreign markets. However, the traditional mechanism does not seem to have been as effective as it might be when it comes to services. One possible explanation is that, given the relatively lesser importance attributed to services trade by governments compared to goods trade, better access to foreign markets may appear to generate smaller prospective profits for exporting firms than the rents/excess profits captured by sheltered incumbents in the countries concerned (Hoekman and Messerlin, 1999). Still, Fiorini and Hoekman (2017) note that the opposition to negotiating reciprocal commitments to open-up services markets is "a bit of a puzzle", in particular given that services trade offers the prospect of attracting foreign investment, via mode 3,

with the associated effects on job quality, technology transfer and induced demand for a broad range of local goods and services.

Resistance to opening markets in the context of trade negotiations may, in various instances, find its origins in the pervasive role that regulation performs in services markets, as alluded to in Section E.2. Amending regulatory regimes is more difficult and complex than reducing tariffs. For starters, responsibility for internationally negotiated services reforms is highly segmented within governments. While the opening-up of manufacturing trade tends to be coordinated between different departments within one ministry (Trade), the competencies for services may reside in a multitude of different ministries (e.g. Education, Health, Finance, Labour, Environment, Communication, Justice and Transport, etc., in addition to Trade) that are not normally required to cooperate. In some cases, the respective competencies are even vested in, and may constitute the sole “raison d’être” of, agencies at the sub-federal level.

As Copeland and Mattoo (2008) observe, given their exclusive focus on regulatory measures, services trade agreements by definition involve measures normally thought of as domestic policy, and so are sometimes perceived as intervening in the domestic policy sphere, even when their sole objective in doing so is to reduce governments’ ability to erect barriers that are detrimental not only to trade but also to economic welfare.

Furthermore, as Hoekman et al. (2007) note, public interest concerns tend to be particularly acute when it comes to services, and clearly separating protectionist measures from legitimate policy-driven measures may be a challenge, as discussed in Section E.2(b). Hoekman et al. (2007) contend that, in the absence of systemic shocks, such as the effect that new technologies had in the telecommunications sector, delivering negotiated services trade-opening is complicated by the possibility that regulators and consumers coalesce around a pro-status quo bias. On the one hand, regulators may resist market-openings because they are concerned that their ability to enforce domestic regulatory standards may be impaired, are captured by incumbent interests, or fear losing any rents they enjoy as a result of restricting entry. On the other hand, consumers, who would normally be in favour of the reforms that could result in lower prices and/or an increase in the choice of services, may oppose them for fear that the quality of the services on offer will be affected.

In this regard, Young (2016) notes that the international political economy literature usually

ignores consumers’ trade policy preferences; consumers are expected to benefit from trade being opened up, but they are assumed not to care about trade policy per se because their individual gains are minimal. However, he argues that when the trade agenda covers behind-the-border measures, as is the case with services agreements, consumer groups become engaged in trade policy-making, and may, in certain instances, do so in defence of national regulations and against the perceived danger of lower quality standards resulting from international trade disciplines.

(b) The dynamics may be changing

The findings of the preceding sections point to the possibility that governments may face growing pressures to pursue additional reforms, and to open up not only their own markets, but also to seek mutual openings on the part of their trading partners. Starting with the domestic market, reform pressures are bound to be on the rise due to a number of factors. First, digitalization has enabled many more services to be traded remotely. This is facilitating the participation of new actors in services trade, such as MSMEs, as Section B has showed. Such new entrants are likely to represent added voices pressuring governments to reduce, if not eliminate, the benefits that incumbents derive from trade protection and urging them to engage in deeper regulatory cooperation.

Second, as the fragmentation of production processes continues, efficient markets for producer services are going to become even more essential to the competitiveness of all firms and their ability to participate in global value chains. This is likely to be especially important for developing countries seeking to diversify their exports and to move up value chains.

Third, demographic changes, rising per capita incomes, environmental concerns and technological advances are intensifying demand for, and trade in, a range of services sectors. As consumers increasingly buy services internationally, they may be expected to become more aware of the existence of any trade barriers.

Fourth, as services trade statistics improve and, in parallel, the measurement of services trade restrictiveness advances, empirical work on the effects of services trade has been growing significantly. While many of the findings are intuitive, the ability to measure them exposes more clearly the benefits of services liberalization and, in parallel, the costs of protecting services.

Looking at export markets, the strong complementarity between goods and services, and the increasing blurring of boundaries between goods and services traders should further widen the range of firms with a stake in more open services markets abroad. The growing servicification of manufacturing makes goods-producing firms not only bigger buyers of services, but also services exporters. The presence of foreign suppliers in domestic markets that are heavily restricted, particularly for intermediate services, is likely to add an international voice to domestic calls for reform.

Taken together, these factors might be expected to motivate governments to open up their own services markets, while working to secure similar openings from trading partners. Using a model of services trade liberalization that is explicitly based in political economy, Fung and Siu (2008) find that when governments also take into account the interests of manufacturing firms, and not just those of services firms, negotiations result in a lower number of state-owned services suppliers.

(c) Greater cooperation on domestic regulation may help

Well-designed domestic regulatory measures and adequate regulatory resources and skills are essential in many sectors to ensure that trade openings are sustainable and welfare-enhancing. Yet trade agreements have not generally been focused on helping governments to implement adequate domestic regulation to ensure that new market-opening fully delivers on its expected benefits. While trade agreements have understandably been focused on ensuring that domestic regulatory measures do not frustrate market openings, Hoekman and Mattoo (2011) note that insufficient consideration has been given to whether domestic regulation and institutions are “adequate” to bring about the benefits of services liberalization or, if they are not, whether international cooperation can help move them in that direction.

Beverelli et al. (2017) find that, in the short and medium run, governance, including the quality of domestic regulatory measures, shapes the downstream effects of services trade policies, and that removing barriers to services trade may be ineffective in cases where weak governance generates excessive uncertainty and insecurity. Looking at EU member states, Fiorini and Hoekman (2017) find that effective governance and regulatory institutions have a positive impact on the economy-wide benefits of services liberalization and, as such, are important complements of a liberal trade regime. They further note that, in the presence of weak governance institutions, eliminating restrictions to the establishment of foreign direct investment may

not induce foreign entry and thus fail to generate any positive downstream effects.

Various commentators (Hoekman et al., 2007; Mattoo, 2015; Fiorini and Hoekman, 2017) argue that accompanying market opening negotiations with greater international cooperation focused on domestic regulation may be one avenue to harness the potential of services trade negotiations and deliver greater market openness. In the same vein, the opinion piece from Jane Drake-Brockman (see page 188) offers a further, services business perspective.

(i) Supporting domestic regulatory capacity

International cooperation could be directed at supporting the development of the domestic capacity and institutions necessary to identify, understand and design the regulatory actions needed to bolster the efficiency of services sectors that are opened up to trade.

Although domestic regulation is essential to realising the benefits of liberalization in many services sectors, there is a disconnect between market-opening negotiations, which are held within the WTO, and the policy advice and assistance for regulatory reform, which are provided separately by multilateral and regional institutions and development agencies (Hoekman et al., 2007). In this sense, Hoekman and Messerlin (1999) maintain that WTO technical assistance for developing countries should not be directed only at expanding the capacity of their trade negotiators to “negotiate”, but should be extended to include strengthening and maintaining domestic regulatory capacity. In the wake of the liberalization undertaken in the telecommunications sector in the WTO in the mid-1990s, for instance, bilateral and multilateral technical assistance was afforded to developing country governments to draft rules and regulations that supported market-opening and strengthened regulators’ capacity, but this was not formally mandated by the WTO. The Trade Facilitation Agreement, which entered into force in 2017, offers a further example of the provision of similar technical assistance, but one which is, crucially, directed by WTO members and explicitly linked to the undertaking of trade facilitating obligations under the WTO.

Along similar lines, commentators point to the role that the WTO’s Aid for Trade (AfT) mechanism could play in the services sphere in supporting trade generally, and services trade more specifically. Reflecting on the role that services play as an input into goods production and trade, Hoekman and Shingal (2017) find complementarity between services AfT and merchandise trade, and between AfT directed

towards economic infrastructure, notably in the transport and energy sectors, and services trade. Shepherd (2017) calls for prioritizing services AfT interventions on domestic regulatory reforms, given their relatively low cost but high impact, especially in terms of trade facilitation.

Although development assistance targeted at economic infrastructure necessities is understandably skewed towards infrastructure projects, Shepherd (2017) also argues that, to reduce services trade costs and enhance trade integration in services markets, AfT should be directed at supporting national policy mechanisms and institutions that help develop effective and efficient services domestic regulation.

(ii) Fostering interaction between trade officials and sectoral regulators

International cooperation could also be aimed at enabling improved collaboration among regulators about the design, content and enforcement of

regulations and more extensive deliberations on their experiences with services reform, all set against key trade principles. Feketekuty (2010) argues that a mechanism is needed for trade officials to interact with sectoral regulators, particularly as the latter design regulation without necessarily considering its trade effects but will be the ones to ultimately affect trade opportunities and, symmetrically, to implement trade obligations. A sectoral focus to discussions would be particularly crucial given how technical, specific and pervasive much services regulation is.

Indeed, even for countries with the necessary resources, regulating many services sectors is a complex task, as the example in Box E.7 illustrates. Moreover, as discussed in Section E.2, the rapid pace of technological change is raising new and significant complications for regulators. In searching for appropriate regulatory answers, the trade impact of regulation might be disregarded, particularly if the need for a solution is urgent.

Box E.7: The complexity of services regulation – the case of network industries

Many network service industries rely on very large-scale infrastructures with high fixed costs and, as such, exhibit important economies of scale. These imply that the segment of the market referred to as the infrastructure “bottleneck”⁵⁷ is most efficiently supplied by a single firm, a “natural monopolist”, as this avoids the wasteful duplication of assets that would arise under competition. However, the attainment of this productive efficiency may engender allocative inefficiency, as the monopolist has an incentive to charge higher, monopoly prices.

As governments step back from their role of monopoly suppliers of such services, regulation needs to be introduced. It is usually directed at “unbundling” the competitive and anti-competitive segments of the value chain and at ensuring that the monopolist controlling bottleneck facilities prices access to such facilities on reasonable terms (e.g. on the basis of an access charge to recover fixed costs and a user charge to recover variable costs) (Dee and Findlay, 2007; Pelkmans and Luchetta, 2013).

In many network industries, regulation is also necessary to ensure general availability of relevant services to all citizens, regardless of income levels or geographical location. Requirements to serve the public may involve defining the scope of the services subject to the obligations, the recipients of these services and relevant quality and price levels. Often, the obligations include universal services mechanisms that may comprise network rollout obligations on service suppliers, compensation of suppliers for serving non-economic customers at below market costs, or direct subsidization of disadvantaged consumers.

Positive network externalities may further complicate the regulation of many network industries. Network effects, whereby the value of the service increases the more users there are, may result in a service or a segment of a market being dominated by only very few players or, in extreme circumstances, by one “winner takes all” firm. To prevent undue monopolization in such situations, regulation, generally geared at universal service obligations, or effective competition policies are required.

Regulation in network services sectors is not only sophisticated and complex but needs to be monitored closely and adapted as necessary as the context evolves. As technological advances reduce the cost of duplicating networks, and hence the extent of natural monopolies, as income levels grow and the scope of universal access mechanisms is enlarged, it is also necessary for regulators to re-examine, and possibly modify, the instruments employed until then. As such, it is essential for regulators to have, and maintain, a high level of sectoral expertise, a clear mandate, technical skills and resources, as well as sufficient independence from operators, and from the former monopolist in particular.

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Why regulatory cooperation matters for business

Facilitating international business requires more than trade negotiation alone. Liberalization of market access restrictions at the border is necessary. But for trade in services, it is not sufficient.

This is because the extent of public ownership and the degree of domestic regulatory intervention has traditionally been higher in the services sector than in the goods sector.

Many of the barriers to trade in services consequently lie in regulatory regimes, not only at borders, but deep behind borders, in a myriad of domestic regulations that constrain the manner in which commercial services business is conducted.

The efficiency of domestic regulation, i.e. the extent to which it avoids imposing undue compliance costs on services providers, is vital to domestic services industries' productivity and international competitiveness (Sáez et al., 2014). Improved efficiency in domestic regulation of services helps grow the local services industry even when it also facilitates foreign entry. This is the distinctive "win-win" of services trade and the underlying rationale for international efforts to agree on principles to guide regulatory best practice in services.

It makes sense, given how important domestic regulatory regimes are, both for international competitiveness and for international market access, that cross-jurisdictional regulatory connectivity should become a matter of significant services business interest.

This is especially the case as the globalization of services intensifies with the shift to the digital economy. Business perception surveys (e.g. PECC, 2016; OECD, 2018b) now consistently show that business respondents consider regulatory disconnects to be the paramount obstacle to increased services trade.

To make matters worse, regulatory fragmentation in the global services economy appears to be on the rise. In 2018, the OECD Services Trade Restrictiveness Index (STRI) showed increased regulatory tightening in telecommunications and computer services. In 2019, the OECD's new digital STRI shows significant regional heterogeneity impacting on services traded over the internet, with the effect that regulatory barriers risk derailing the benefits of digitalization. Looking at the whole digital ecosystem, heterogeneity is especially evident in regulations affecting infrastructure and connectivity, the areas also

experiencing most recent tightening of policy changes.

These regulatory barriers translate into hefty tax equivalents that significantly exceed average tariffs on traded goods (as high as 80 per cent in some sectors) and raise the price of services (as much as 20 per cent in some sectors). Larger firms are more able to find ways around the regulatory disconnects, so this impacts most severely on MSMEs, raising their average trade costs by an average additional 7 per cent (OECD, 2018b).

The need for international regulatory cooperation in services is not new. It has long been recognized as a contributing element of regulatory best practice. This is partly because international benchmarking and sharing of information are helpful in the domestic regulatory design process. It is also because regulatory interoperability across different jurisdictions has proved essential to improving the effectiveness of domestic regulations in achieving their public policy purposes: think international air transportation (ensuring safety and connectivity) or shared expertise in the development of technical standards (Mumford, 2018). But the need for regulatory cooperation has grown exponentially since the GATS came into effect.

As services become increasingly tradeable across borders as a result of new technologies, the need for dedicated regulatory cooperation efforts will become increasingly evident to governments. After two decades of post-GATS business reality on the ground, the business community is beginning to agree that unlocking further trade liberalization on services is going to require a big push in terms of regulatory cooperation.

Some commentators (e.g. Mattoo, 2015) suggest that regulatory cooperation has become a critical pre-condition for further services trade liberalization, at least in the WTO. Mattoo argues for a sequenced approach, with much greater immediate effort on regulatory cooperation, because without the greater mutual understanding, enhanced confidence and familiarity that come from regulatory interaction, efforts at services trade liberalization will remain stymied.

From a services business perspective, neither trade liberalization nor regulatory cooperation are independently sufficient to facilitate international flows of services. Both are necessary; for services trade to grow, the two must go hand-in-hand.

Some services sectors and some modes of supply experience higher degrees of regulatory heterogeneity than others. Mode 4 of the GATS has always been and remains highly constrained by regulatory

disconnect. Mode 3 has been the least impacted and traditionally has shown the highest growth rate. Thanks to digitalization, mode 1 should be top of the charts – but is much more constrained than it should be, if regulators could only find appropriate ways to engage.

That is the crux of the problem. Where and how should regulators engage? Regional groupings are already grappling with this. The WTO needs to do the same.

Over the last decade, 77 per cent of RTAs have included provisions on trade in services, up from 16 per cent in the 1990s (Braga et al., 2019). As businesses increasingly call for greater regulatory seamlessness, the services aspects of RTAs are edging towards deeper levels of integration, including greater alignment on regulatory principles. Agreeing on the elements that constitute regulatory best practice is a vital first step.

Efforts are also needed on mutual recognition and equivalence – the outcomes of regulatory cooperation in action.

As a non-negotiating forum, APEC has been well positioned to set some influential precedents in regulatory cooperation relevant to facilitating trade in services. To name a few: the APEC Business Travel Card, Asia Region Funds Passport, Cross-Border Data Privacy Rules and Non-binding Principles for Domestic Regulation in Services.

Most regional integration fora recognize the importance of complementing services trade negotiation with efforts to reduce regulatory irritants and disconnects across regional markets. The EU Services Directive is all about improving the regulatory environment for cross-border services trade, including in professional services; the EU Digital Single Market similarly establishes a strategy to build regulatory interoperability. Regulatory excellence is a core pillar of the Master Plan on ASEAN Connectivity. The Caribbean Community (CARICOM) has developed a regional Certificate of Recognition of CARICOM Skills Qualification; the Common Market for Eastern and Southern Africa (COMESA) has a Yellow Card for cross-border motor vehicle insurance. The list goes on, but most regional fora remain seriously under-utilized in terms of their potential for regulatory cooperation.

Business is looking for a big push – at all levels but specifically in the WTO – and especially with respect to the many regulatory building blocks required for digital trade. The e-commerce negotiations have the potential to show the way.

To build a foundation for this effort to succeed, WTO members need to create new fora to help share perspectives and build regulators' confidence in each others' approaches and perspectives.

WTO services committees could be one avenue to help governments become aware of and better understand the trade impact of the regulatory requirements they, and their trading partners, enact. As Hoekman (2017) notes, this could enable consideration of possible alternative approaches that would achieve exactly identical public policy objectives in a less trade-restrictive manner. Cooperating in the context of trade agreements may also benefit sectoral regulators if it helps mobilize additional resources to reduce capacity constraints in support of such cooperation.

(d) The sequencing of market openings and regulatory actions matters – and phased-in commitments may have a role to play

Balchin et al. (2016) argue that, in industries where market failures are significant, the necessary regulatory policies have to be in place before, and in parallel with, the opening of services markets, rather than subsequent to their opening. This points to one of the many challenges that trade negotiations face when trying to deliver new services market openings. In the absence of concerted efforts on the part of regulators and trade negotiators, it is difficult to ensure that liberalization advances in tandem with the accompanying domestic regulatory interventions necessary to reap the expected benefits of market-opening.

One way to address this challenge could be to make fuller use of commitments to future liberalization, to allow for sufficient time to develop the necessary accompanying domestic regulatory measures. The GATS offers a valuable mechanism in this regard, as it allows WTO members to undertake legally binding market opening commitments that only take effect at a future date bound in the commitment. Any such phasing-in of commitments offers exactly the same degree of certainty and legal force as commitments to immediate liberalization; a failure to honour them when they become applicable could be legally challenged and lead to an obligation to compensate affected trading partners, thus strengthening a government's resolve to implement desired regulatory reforms.

WTO members have had some limited recourse to such phased-in commitments, notably in the telecommunications sector, which is arguably one of the few areas in which the GATS has been successful in delivering actual liberalization.⁵⁸ However, the potential of such mechanisms to contribute to greater market-opening has not yet been explored to its full extent. As Low and Mattoo (1999) observe, phased-in commitments make a domestic pledge to open up

services markets more credible than a simple policy announcement. Governments may be unwilling to remove trade barriers immediately because of an “infant regulation” argument (i.e. an insufficiently developed regulatory framework) or a traditional “infant industry” rationale (i.e. a notion that, if shielded from competition, domestic suppliers would be able to gradually learn-by-doing and ultimately become internationally competitive). However, once trade restrictions are in place, governments may be unable to threaten credibly to remove them, either because governments have a direct stake in domestic firms or because they are captured by private interest groups. Committing to future liberalization might help to counter the perpetuation of infant industry measures, whereby “transitory” strategies become permanent due to pressure from invested stakeholders. It also gives the affected industry and other stakeholders time to adapt and prepare for competition, for example through corporate restructuring, revamping of the product offering, or exploring new markets.

Mattoo and Sauvé (2011) also note that the same mechanism could be at play in South-South RTAs whose objective is to expose domestic industries to competition in a progressive manner, by liberalizing exclusively at the regional level initially, and globally only subsequently. However, as the creation of new vested interests, which resist any additional market-opening, may end up frustrating the original goal, committing to future liberalization at the multilateral level would offer a potentially important way of ensuring that reform is locked in to a definitive time-frame.

(e) Areas where further cooperation on services trade policy is being pursued

On-going deliberations in the WTO point to the areas in which the members concerned feel that international cooperation with regard to services trade policy is worth pursuing further. These discussions address both possible improved market-opening commitments and regulatory disciplines. They do not necessarily reflect the areas, or the only areas, where further collaboration would be desirable, but are, rather, a demonstration of a meeting of minds among the members concerned that WTO discussions on those topics can be valuable. The fact that, contrary to traditionally held perceptions that services trade is only of interest to richer countries, they involve members at all levels of development is likely testament to the growth and development potential of services trade.

Starting with deliberations on market-opening, the proponent members note that multilateral services commitments have been under-used to bind services

trade policies conducive to economic growth and trade integration. Room for improvement is considerable, as commitments generally reflect a much more restrictive picture than applied regimes. Multilateral commitments do not match the role that services play in the global economy today, including in developed and developing members' trade in value-added terms.

While more has been achieved in a number of services RTAs, especially in terms of providing for greater certainty and predictability by guaranteeing existing levels of openness, the set of bilateral and plurilateral RTAs do not cover world services trade as fully as they might. Moreover, given their behind-the-border regulatory nature, services trade measures are embedded in domestic regimes and hence generally, although not exclusively, applied on an MFN basis. This means that no modification of relevant domestic regulatory regimes would be required to extend many of the RTA bindings multilaterally. In keeping with the negotiating processes built into the GATS, multilateral commitments could, moreover, be undertaken in a "variable geometry" configuration, by those members that are so inclined, and in the sectors of their choosing. As has happened in the past (see Box E.3), GATS bindings can emerge from plurilateral processes with multilateral outcomes, applied on an MFN basis.

In view of the transformative role of technology on trade in services, it may come as a surprise that, in e-commerce-related services sectors, market openings under the WTO are not yet fully committed and therefore predictable. This is largely due to the fact that most GATS commitments date back to 1995 and the classification used to undertake those commitments dates to 1991. Opportunities to achieve bindings and to better understand services classification, in order to be sure of how existing and future commitments may encompass online supply across borders or through commercial presence, could provide services trade with a boost. This would potentially benefit not only larger, more developed economies, but also developing economies and MSMEs that are actively engaging or preparing to trade online. According to a number of the proponent members, both market-opening commitments and regulatory obligations are relevant to any such effort. The possibility to commit to phase-in dates by members whose relevant regulatory regime is still being put in place might be relevant in this context.

One of the prominent features of e-commerce is its globalized nature and the worldwide reach of the companies taking part in it. For this reason, many government measures, which may include privacy

rules, requests to remove material from the internet, or cybersecurity laws, are increasingly characterized by a degree of extraterritorial consequences, intended or not. While this may be controversial, in some respects it is unavoidable. Whereas commercially present foreign suppliers operate in the territorial and legal jurisdiction in which they supply services, cross-border suppliers using telecommunications technologies to trade do not. When governments lack formal jurisdiction over a supplier that is not in their territory, governments face challenges in enforcing relevant laws and regulations. Not only can these features create difficulties for the application of governments' regulatory regimes, they can also lead to conflicting and overlapping rules that may confront global suppliers of services, whether large or small. MSME service suppliers can find differing rules in different jurisdictions especially daunting, as they do not have the resources that large companies have to adapt to these differences.

As such, the increasing feasibility and importance of cross-border supply brings with it challenges for governments and for the trading system, making collaboration and cooperation across borders significantly more important than in the past. Improving regulatory frameworks for e-commerce is supported by discussions in the WTO Work Programme on Electronic Commerce and the Joint Statement Initiative on e-commerce, as well as in UNCTAD, the OECD, and many other international and regional organizations working on e-commerce issues. Although harmonization may be unrealistic, particularly beyond the regional level, given societal differences and disparate legal traditions, compatibility and coordination across borders is achievable if governments take advantage of existing mechanisms or create new ones for regulatory consultation and cooperation. Such cooperation may be technical, related to standards for the new technologies and the services that thrive on them. Other cooperation may be between regulators, with a view to resolving particular problems. Finally, some collaboration on basic principles for trade in services that characterize the digital economy might also take place.

Still, many of the regulatory issues related to services in general, and likewise to e-commerce, are not normally under the direct competence of trade ministries. Recently, many trade ministries, as well as ICT ministries, have embarked on inter-agency consultative processes to collaborate and coordinate on cross-cutting e-commerce issues. Some international organizations exist wherein competent authorities related to certain e-commerce issues can come together, for example in the International

Telecommunication Union and, in particular, its annual Global Symposium for Regulators, but this is not consistently the case. Cybercrime, for example, is one area in which governments are only beginning to set up arrangements for consultation with one another, usually via bilateral relations.

Another area of on-going WTO work concerns disciplines on GATS domestic regulation. As discussed above, WTO negotiations on GATS domestic regulation disciplines have focused on the ability of suppliers to obtain licenses and qualifications so as to be authorized to supply services in, or into, new markets. While the negotiations among WTO members have not concluded, GATS+ “innovations” contained in draft texts relate in particular to enhanced transparency provisions and due process provisions related to the administrative procedures. It is noteworthy that the multilateral process seems to have paved the way for outcomes in many RTAs up until 2009, by incorporating text elements of WTO Chairman’s drafts into a number of RTAs. Following the impasse in services negotiations after 2011, the reverse trend is now observable: draft texts proposed by members in the WTO as of 2016 are strongly influenced by language developed in regional negotiations, and gaining acceptance for text developed outside the multilateral structure of the WTO has proven to be difficult for proponents.

That said, certain “good practices” for regulation appear to be acceptable for many members representing most of world services trade. These relate in particular to enhanced transparency provisions, including the right of services suppliers to obtain information from host country authorities, and the possibility to comment on draft regulation. Another focus has been on the rationalization of the authorization process, with a set of rules related to the treatment of applications, including on application timeframes, processing times, electronic submissions and processing fees.

While many of the provisions appear to be acceptable only as “soft” obligations at this time, it is clear that there is a basic understanding among many members that such efficiency-enhancing provisions are of universal benefit. At the same time, there seems to be broad agreement not to subject regulatory requirements to strict disciplines, beyond requirements that these are to be based on objective and transparent criteria.

In this context, notwithstanding the adoption of the Disciplines on Domestic Regulation in the Accountancy Sector in 1998, the vast majority of members is uncomfortable at present with the

introduction, as was the case in those Disciplines, of a necessity test requiring that regulatory requirements (or even procedures) are not more trade-restrictive than necessary (to achieve legitimate objectives). Similarly, many members do not appear comfortable with adopting specific obligations with regard to qualification procedures for professionals, in spite of the already existing obligations to have adequate procedures in place to verify the competence of foreign professionals in sectors in which access for such professionals has been granted. This reluctance may be explained by a degree of existing heterogeneity as well as the perceived “uniqueness” of many countries’ professional qualifications.

The fundamental technological changes discussed above may enable different conclusions: on the one hand, it may be possible that the technical ability of professionals to supply their services across borders will lead to greater cooperation of professional regulators, driven by demands from their previously largely inward-looking constituencies; on the other hand, the possibility to disaggregate many professional services into a multitude of components that can readily be offshored may obviate the need to seek professional accreditation.

When it comes to the services elements of discussions on investment facilitation, many aspects of services FDI are already taken care of in the GATS through its coverage of commercial presence (mode 3). Nevertheless, as discussed in Box E.5, manufacturing FDI has been found to be related to services trade, particularly through commercial presence. This would seem to point to a more holistic approach to investment policies, which is indeed already the approach of a myriad of preferential trade agreements, as they cover all investment policies and regulations, regardless of whether they cover investment in services or manufacturing activities, in one single chapter. In particular, investment facilitation policies (e.g. providing for more transparent and predictable investment frameworks, reducing red tape, and promoting the coordination of central and sub-central FDI policies and regulations), by facilitating FDI broadly, may contribute to the expansion of services trade.

Finally, besides rule-making discussions, members use, and might further exploit the potential of, WTO regular committees, such as the Council for Trade in Services, to foster regulatory cooperation in areas of common interest. In the context of WTO regular committees, “soft” approaches requiring a lower degree of collaboration, such as information exchanges on regulatory approaches, processes or practices, would appear to be possible candidates

for promoting regulatory cooperation. Work carried out in other WTO committees also concerned with regulatory measures – notably the SPS and the TBT Committees – may provide some food for thought in that regard. For example, those committees have put a great deal of work into improving the transparency of regulations, including through the development of guidelines, as well as into promoting internal coordination between national regulatory authorities as a way of enhancing the quality, coherence and efficiency of regulations. Similar approaches aimed at improving transparency and domestic coordination among relevant regulatory authorities might also be useful in the services context, where the latter has proven particularly challenging.

A key aspect relates to the identification of possible areas where members may have an interest or incentive to cooperate, taking into consideration the diverse composition of the membership, including members' different objectives and levels of regulatory capacity. Given the evolving nature of regulations, Bollyky (2017) has suggested areas where members face common regulatory challenges, such as those emerging from the development of new technologies. In this context, exchanging information and experiences on how to address these regulatory challenges would allow them to learn from one another. This may be particularly beneficial for economies that are developing their regulatory capacity and wish to assess different regulatory options and their implications. Another area that has been suggested as providing a possible ground for regulatory cooperation at the multilateral level relates to sectors dominated by GVCs (Hoekman, 2015 and Bollyky, 2017). This may include, for example, the development of some basic principles or guidelines aimed at reducing regulatory fragmentation in order to reap the benefits of GVCs.

5. Concluding observations

Many forces are shaping world services trade. Technological advances and digitalization have been exerting a particularly profound transformational impact, and other factors, such as demographics, income growth and environmental concerns are further changing the markets and actors, the relevance of the various modes of supply and the composition of services trade. These developments present governments with significant opportunities, as well as sizeable challenges, to ensure that services trade delivers inclusive growth, development and economic diversification.

International cooperation has played a crucial role in ensuring that services trade takes place under

transparent, rule-based and predictable conditions. Countries have collaborated on lowering trade barriers and on domestic regulatory measures, both in the WTO and in RTAs. Yet, thus far, such collaboration has not been fully exploited to deliver on its potential, as exemplified by the overall shallow levels of services commitments in the WTO compared to actually applied services regimes, except on the part of economies that acceded to the WTO after 1995, and still has room to evolve. The generally modest state of WTO commitments stands in stark contrast with the breadth of the levels of access bound in RTAs. RTAs have also made deeper inroads in developing disciplines, in particular on services e-commerce, GATS domestic regulation, mode 4 and telecommunication services.

However, services trade agreements, multilateral as well as bilateral/regional, have so far found it difficult to drive services trade reforms. One likely explanation for this state of affairs is the pervasive role that regulation plays in services markets and the essential role that well-designed regulatory policies and adequate domestic regulatory capacity play in delivering welfare-enhancing trade liberalization.

Still, the findings of this report point to a number of factors that might motivate governments not only to open up their services markets, but also to seek mutual openings on the part of their trading partners. This has led various commentators to argue that accompanying market opening negotiations with greater international cooperation focused on domestic regulatory measures may be one avenue to harness the potential of services trade, given the strong complementary between the two aspects.

In most services sectors, market openings need to be supported and enhanced by adequate domestic regulatory measures, while strengthened regulation and governance are a necessary condition for trade-openings to deliver on their potential economic benefits. Technical assistance and capacity-building would be particularly crucial in this regard, enabling countries to better respond to the challenges and opportunities brought about by technology and the ensuing changes in services trade patterns.

On-going deliberations in the WTO point to the areas where the members concerned feel that international cooperation is worth pursuing further. They do not necessarily reflect the issues, or the only issues, where deeper collaboration would be desirable, but rather demonstrate a meeting of minds amongst the members concerned that WTO discussions on those topics can be valuable.

Appendix Table E.1: Overview of relevant work of other international organizations

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Organization	Description/relevant initiatives	Standards and recommendations	Website
International Civil Aviation Organization (ICAO)	ICAO develops standards, recommended practices and procedures, as well as policies related to international civil aviation safety, air navigation capacity and efficiency, security, environmental protection and the economic development of air transport. - Convention on International Civil Aviation - Facilitation (FAL) Programme	- Standards and Recommended Practices (SARPs) - Procedures for Air Navigation Services (PANS) - Regional Supplementary Procedures (SUPPs) - Guidance Material in several formats	http://www.icao.int/
International Maritime Organization (IMO)	The IMO is responsible for the safe, secure and efficient shipping and the prevention of pollution from ships. This is done through the harmonization of regulations, requirements and procedures related to ships, cargoes, crews and ports. - Convention on the Facilitation of International Maritime Traffic (FAL)	- Standards and Recommended Practices set out by the FAL Convention	http://www.imo.org/
International Telecommunication Union (ITU)	Meetings, e.g.: - Annual Global Symposium for Regulators (GSR) - Development Bureau, Study Group 1 - Enabling Environment for the Development of Telecommunications/ICTs - Development Bureau, Study Group 2 - ICT Services and Applications for the Promotion of Sustainable Development - Standardization Bureau, Study Group 3 - Economic and policy issues. Publications, e.g.: - Global ICT Regulatory Outlook (annual) - Measuring the Information Society Report (MISR) Vol 1. and Vol. 2, which includes the ICT Development Index (annual)	- ITU Recommendations - Regulatory best practice guidelines issued by GSR	http://www.itu.int/
United Nations Educational, Scientific and Cultural Organization (UNESCO)	- Conventions and Recommendations on recognition of qualifications, such as: Revised Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and Other Academic Qualifications in Higher Education in African States (2014) Asia-Pacific Regional Convention on the Recognition of Qualifications in Higher Education (2011)	- Recommendations, guidelines and principles included in conventions and international treaties	http://www.unesco.org/

Appendix Table E.1: Overview of relevant work of other international organizations (continued)

Organization	Description/relevant initiatives	Standards and recommendations	Website
United Nations World Tourism Organization (UNWTO)	<ul style="list-style-type: none"> - Global Code of Ethics for Tourism (GCET) - Initiative for Measuring the Sustainability of Tourism (MST) - Aid for Trade and the Enhanced Integrated Framework (EIF) - B2B Session of INVESTOUR 2019 for tourism investment promotion - First UNWTO/ICAO Ministerial Conference on Tourism and Air Transport in Africa, held in March 2019 	<ul style="list-style-type: none"> - Principles set out by the Global Code of Ethics for Tourism 	http://unwto.org
Universal Postal Union (UPU)	<p>The UPU sets the rules, standards and technical assistance for international mail exchanges which enable and facilitate trade in postal services</p> <ul style="list-style-type: none"> - Terminal dues 	<ul style="list-style-type: none"> - Technical standards and Electronic Data Interchange (EDI) messaging standards 	http://www.upu.int/
World Health Organization (WHO)	<p>The International Health Regulations (IHR, 2005) are an international legal instrument that is binding on all the member states of WHO. The purpose and scope of the IHR is to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade.</p> <p>Also, WHO is increasingly engaging in eHealth issues, as well as in health worker mobility.</p>	<ul style="list-style-type: none"> - International Health Regulations - Global Code of Practice on the International Recruitment of Health Personnel 	http://www.who.int/

Endnotes

- 1 “Domestic regulatory measures” or “domestic regulation” are used interchangeably in this section, to refer to regulatory measures that affect trade in services but that are not barriers to trade (i.e. neither limitations to market access, as defined in GATS Article XVI, nor to national treatment, as per Article XVII). The term “GATS domestic regulation”, however, specifically refers to licensing procedures and requirements, qualification procedures and requirements, and technical standards, i.e. to those domestic regulatory measures for which disciplines are mandated to be developed under GATS Article VI:4.
- 2 <https://www.uber.com/en-CH/newsroom/company-info/> – consulted in July 2019.
- 3 A fuller discussion of why governments regulate services markets may be found in Section II.3.C of WTO (2012).
- 4 Externalities refer to situations where the price of a service does not reflect the true cost or benefit to society of producing that service.
- 5 Acceded members are those economies that, in contrast to the WTO’s founding members, acceded to the WTO after its creation in 1995.
- 6 The Fifth Protocol provided that, if by 30 January 1999 it had not been accepted by all its signatories, those signatories which had accepted it before that date would decide on its entry into force. The latter members finally decided to let the protocol enter into force on 1 March 1999. In addition, the date for acceptance by other signatories was extended until 15 June 1999. After 15 June 1999, the Council for Trade in Services opened the Fifth Protocol on a case-by-case basis to allow for the acceptance by the outstanding signatories. All signatories eventually accepted the Protocol.
- 7 Sunk costs are costs that firms have already incurred and cannot recover upon exiting a market.
- 8 The services negotiations were extended beyond 1995 also for mode 4, yielding minimal results, and maritime transport services, proving inconclusive.
- 9 Another relevant phenomenon is the abundance of bilateral investment treaties that overlap with trade in services through mode 3. While these treaties would normally not meet the criteria of Article V of the GATS because other modes of supply are typically excluded, they nevertheless tend to have broad sectoral coverage and to guarantee national treatment at the post-establishment stage.
- 10 The majority of services RTAs notified to the WTO since 1 January 2015 have been agreements between developing countries, rather than developed-developed or developed-developing country agreements.
- 11 The LDC Services Waiver was adopted by the WTO Ministerial Conference on 17 December 2011 and allows WTO members, notwithstanding the MFN obligation of GATS Article II, to grant preferential treatment to services and service suppliers from LDC members.
- 12 The discussion of market-opening commitments in the GATS and RTAs draws on Roy (2019).
- 13 WTO official documents may be accessed via https://docs.wto.org/dol2festaff/Pages/FE_Search/FE_S_S005.aspx
- 14 The importance of “partial commitments” would be increased (and that of “full commitments” reduced) if horizontal limitations were taken into account as most schedules contain such cross-sectoral limitations, especially as it regards modes 3 and 4.
- 15 See WTO official document JOB/SERV/282. In 2019, the four economies submitted a communication on market openings in the tourism sector (WTO official document JOB/SERV/286).
- 16 The term “Joint Statement Initiative” refers to a number of initiatives that their respective proponent groups, each representing around 70 WTO members at all levels of development, unveiled at the occasion of the Buenos Aires Ministerial Conference, stating their intention to move forward with discussions in the areas concerned.
- 17 The reference to RTAs encompasses all preferential trade agreements.
- 18 “GATS+” refers to commitments that have a wider sectoral coverage and deeper level of openness than those undertaken under the GATS, or to disciplines that build upon those of the GATS.
- 19 Other studies have underscored how a number of members have undertaken commitments in RTAs that are more restrictive than under the GATS. See, for example, Adlung and Miroudot (2012).
- 20 In the GATS, in contrast, the obligations of market access and national treatment apply only to the sectors inscribed in the schedule of specific commitment.
- 21 Existing non-conforming measures are typically listed in a first annex, while a second annex contains reservations for sectors or activities where a party wishes to maintain non-conforming measures or adopt new ones in the future. Further, various RTAs that use a negative-list approach will have a separate chapter on the entry of natural persons, where commitments are undertaken in a positive manner.
- 22 This concept refers to the possibility that an economy that does not make any trade concessions, profits, nonetheless, from concessions made by other economies in negotiations under the MFN obligation.
- 23 See for example Art. 11.5 of ASEAN-AU-NZ, Art. 19.1 of Canada-Korea, Art. 9.6.3 (financial services) of China-Korea, Art. 21.1.2 of Korea-US, Art. 26.2 of CPTPP, Art. 1.13.2 of EU-Viet Nam, Art. 18.1 of Colombia-Korea and Art. 9.8.2 of Pacific Alliance Partnership Framework Agreement (via <http://rtais.wto.org/>).
- 24 See for example, Art. 5.4 of ASEAN-AU-NZ, Ar. 10.11.6 of Canada-Korea, Art. 66.1 of India-Japan, (services suppliers) Article 9.8 of Colombia-Korea and Art. 9.8.1 of Pacific Alliance Partnership Framework Agreement (via <http://rtais.wto.org/>).
- 25 See for example, Art. 5.5 of ASEAN-AU-NZ (financial services), Arts. 10.11.7 (financial services) and 11.10 (telecommunications) of Canada-Korea, Art. 10.9 (telecommunications) and Art. 9.6.6 (financial services) of China-Korea (via <http://rtais.wto.org/>).

- 26 See for example, Art. 26.2 of CPTPP and Art. 11.3 of ASEAN-AU-NZ (via <http://rtais.wto.org/>).
- 27 See for instance, Art. 5.7 (financial services) of ASEAN-AU-NZ, Art. 10.11.9 (financial services) of Canada-Korea, Arts. 12.3.5 and 12.3.13 of CETA, Art. 9.6.8 (financial services) of China-Korea, Art. 10.8.4 of CPTPP, Art. 8.20.4 of EU-Viet Nam, Art. 6.7.3 of EFTA-the Philippines and Art. 9.9.2 of Pacific Alliance Partnership Framework Agreement (via <http://rtais.wto.org/>).
- 28 See for example, Art. 10.5 of ASEAN-AU-NZ and Art. 12.3.15 of CETA, Art. 10.8.4 of CPTPP and Art. 8.20.5 of EU-Viet Nam (via <http://rtais.wto.org/>).
- 29 See for example Art. 10.5 of ASEAN-AU-NZ, Art. 12.3.16 of CETA (via <http://rtais.wto.org/>).
- 30 See for example Art. 12.3.8 of CETA, 10.8.5 of CPTPP, Art. 8.20.1 of EU-Viet Nam, Art. 8.312 of EU-Japan and Art. 9.9.4 of Pacific Alliance Partnership Framework Agreement (via <http://rtais.wto.org/>).
- 31 See for example, Art. 10.8.6 of CPTPP and Art. 9.9.5 of Pacific Alliance Partnership Framework Agreement (via <http://rtais.wto.org/>).
- 32 See for example Art. 12.3.11 of CETA, Art. 8.31.4 of EU-Japan (via <http://rtais.wto.org/>).
- 33 See for example Art. 10 of ASEAN-AU-NZ, Art. 9.9.1 of Pacific Alliance Partnership Framework Agreement and Art. 7.7.1 of Turkey-Singapore (via <http://rtais.wto.org/>).
- 34 See for example, Arts. 12.1 and 12.2 of ASEAN-AU-NZ, Art. 19.4 of Canada-Korea, Art. 12.3.6 of CETA and Art. 16.5 of Turkey-Singapore (via <http://rtais.wto.org/>).
- 35 See for example, Art. 9.8.4 of Australia-Japan, Art. 7.7.2 of Turkey-Singapore, Art. 9.7.2 of Colombia-Korea and Art. 9.9.3 of Pacific Alliance Partnership Framework Agreement (via <http://rtais.wto.org/>).
- 36 Based on data extracted from Gootiiz et al. (2019), which covers RTAs notified until 2018.
- 37 As in many cases, MRAs form part of the RTA built-in agenda, there is no available data on the actual number of MRAs concluded within the purview of RTAs. A number of MRAs have been concluded, for instance, in the context of APEC, ASEAN, and more recently, the EAC.
- 38 See for example Annex 9-A of Colombia-Korea, Art. 11.3 of CETA, Art. 8.21 of EU-Viet Nam and Annex 9.10 of Pacific Alliance Partnership Framework Agreement (via <http://rtais.wto.org/>).
- 39 See Art. 9.8 of Canada-Korea (via <http://rtais.wto.org/>).
- 40 See for example Art. 9.8 of Canada – Korea (via <http://rtais.wto.org/>).
- 41 See for instance, CPTPP, CETA, EU-Japan and Pacific Alliance Partnership Framework Agreement (via <http://rtais.wto.org/>).
- 42 See for example Arts. 25.4 and 25.6 of CPTPP, and 18.5, 18.6 and 18.7 of EU-Japan (via <http://rtais.wto.org/>).
- 43 See for example, Arts. 21.4 and 21.7 of CETA (via <http://rtais.wto.org/>).
- 44 Footnote 1 to Article V:1(a): “This condition is understood in terms of number of sectors, volume of trade affected and modes of supply. In order to meet this condition, agreements should not provide for the a priori exclusion of any mode of supply”.
- 45 See for example, Art. 9.4.5 of Korea-New Zealand (via <http://rtais.wto.org/>).
- 46 See for example, Art. 1203.3 of Canada-Peru (via <http://rtais.wto.org/>).
- 47 See for example, Art. 13.04.3 of Canada-Panama (via <http://rtais.wto.org/>).
- 48 See for example, Art. 80 of China-Singapore (via <http://rtais.wto.org/>).
- 49 See for example, Art. 9.6.1 of ASEAN-AU-NZ (via <http://rtais.wto.org/>).
- 50 See for example, Art. 128 of New Zealand-China (via <http://rtais.wto.org/>).
- 51 See for example, Art. 82 of China-Singapore (via <http://rtais.wto.org/>).
- 52 See for example, Art. 77.3 of India-Japan (via <http://rtais.wto.org/>).
- 53 See for example, Art. 9.8 of ASEAN-AU-NZ (via <http://rtais.wto.org/>).
- 54 “Economic needs tests” or “labour market tests” are tests that condition market access upon the fulfilment of certain economic or labour criteria.
- 55 See, for instance, the CO₂ emission standards for aircraft developed by the International Civil Aviation Organization.
- 56 One example is the Standards and Trade Development Facility, a global partnership that helps developing countries comply with international sanitary and phytosanitary standards.
- 57 Examples include the electricity transmission grid or the underground transport network.
- 58 In the context of the basic telecommunications negotiations (see Box E.3 for further details), many governments first undertook a phased-in commitment to enact reforms by a set deadline, and thereafter used these international obligations to help garner domestic consensus on the reforms and allow firms, both incumbent and new entrant, to prepare.