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Facilitating Trade in Services

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Abstract

In 2016, the Government of India proposed negotiations on an agreement to facilitate trade in services to complement the 2013 WTO agreement on facilitation of trade in goods. The proposal did not find much support, but plurilateral talks launched at the 2017 WTO ministerial conference in Buenos Aires encompass policy areas that are very relevant from a services trade facilitation perspective. This paper argues that participating in the current plurilateral talks can do much to achieve services trade facilitation objectives by identifying good regulatory practices. Although elements relevant to services trade facilitation are on the table in the WTO, there are important gaps. Identifying priorities for complementary international cooperation to facilitate trade in services on a plurilateral basis requires initiatives that bring together governments, services industry associations and sectoral regulators.

Keywords

Trade in services; facilitation; G20; international agreement; plurilateral cooperation.

Introduction*

There is now broad recognition of the potential benefits of facilitating cross-border trade flows by reducing the incidence of “red tape” associated with the implementation of domestic tax and regulatory policies. This recognition is informed by a plethora of academic research, supported by business surveys, documenting that the associated costs are often a multiple of import tariffs that apply to goods without generating similar benefits for the economy in the form of government revenue.¹ The associated costs reflect a combination of the real resources that must be allocated by firms to satisfy administrative requirements and the uncertainty and unpredictability that often is associated with border clearance processes. Many of the provisions of the GATT are aimed at facilitating trade in the sense of reducing such costs. Examples include publication and related transparency requirements and substantive rules regarding how trade policies should be implemented – e.g., relating to the classification and valuation of products for purposes of collecting import duties or the permitted basis for charging additional fees and charges. The 2013 WTO Agreement on Trade Facilitation (TFA) builds on extant GATT rules to define in much greater detail a series of good practices that all WTO members agreed should be implemented to further facilitate trade in goods (see Hoekman, 2016).

The TFA applies only to goods, not to services. In most countries, services account for 55-75% or more of total output and employment. For the world as a whole the role of services has been increasing rapidly, reflecting a mix of technological changes and rising average per capita incomes. Efficient services are ever more critical for economic development, in part because many services are inputs into the production of other services and goods and thus the cost, quality and variety of services determine the competitiveness of firms and impact on overall economic growth. Although services account for the majority of economic activity in most economies, the share of services output that is traded is much less than for goods. However, technological changes are making services increasingly tradable. Many services that were not tradable in the past can now be provided cross-border at arms-length using the internet and telecommunications networks (Gervais and Jensen, 2019).² Although cross-border trade in services has been growing rapidly – epitomized by the offshoring of business process services – in many cases suppliers or customers still need to physically move to the location of the other to allow service provision to occur. Here too a mix of technological advances and policy reforms have supported greater international exchange. Falling costs of air transportation and shifts towards use of international supply chains have led to increasing flows of temporary cross-border movement of persons providing different types of services. While developments in digitization and business process outsourcing and offshoring attract much attention in the popular press, in practice trade in services frequently requires the cross-border movement of services suppliers, both temporary and longer-term in the form of establishment of a commercial presence in a market.

1. Sources of services trade costs

Reducing services trade costs is an important dimension of the challenge of increasing economy-wide productivity and per capita incomes. Because many services are inputs into production of goods and other services, if input costs are higher than they would be in an environment where services trade costs were lower, this will act as a tax on domestic industries and reduce their competitiveness. The stylized fact here is that trade costs for services are much higher than trade costs for goods. Figure 1 reports

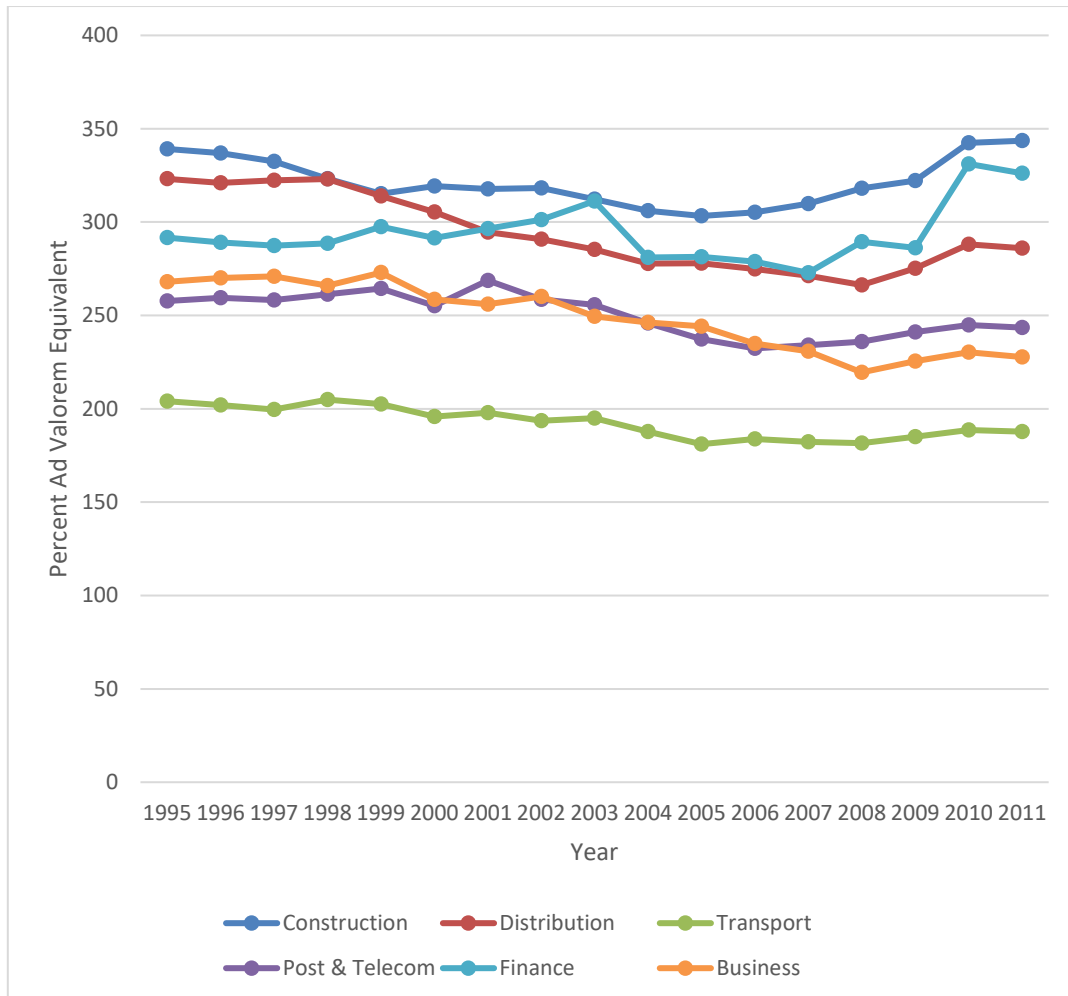
* This paper expands on a note with the same title prepared for a March 2017 Government of India and World Bank workshop on Trade Facilitation in Services. This version has been updated to reflect developments since 2017 and discussions at a follow-on workshop held in New Delhi in December 2019.

¹ See for example Moisé and Sorescu (2013).

² WTO (2019) provides an in-depth overview and discussion of trade in services.

estimates of the ad valorem tariff equivalent of international trade costs for different services sectors. As can be seen, costs differ substantially across sectors with transport confronting the lowest trade costs on average and construction the highest. For most sectors, trade costs have not declined substantially since the mid-1990s. The result is to reduce the volume of trade in services, and thus to reduce the access firms and households have to low cost services.

Figure 1: Estimated trade costs for services



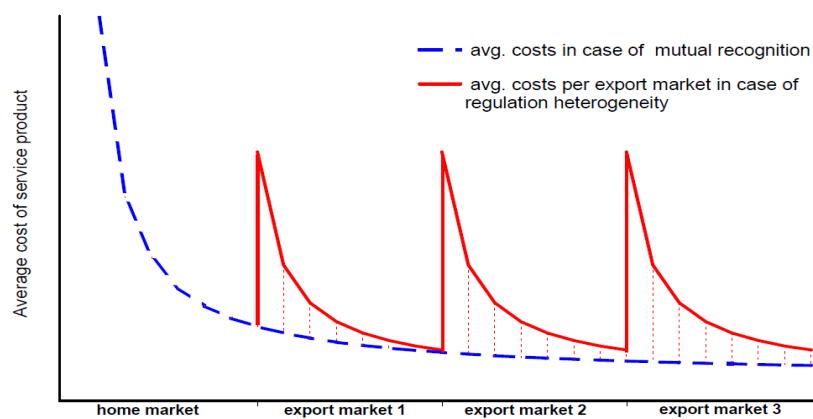
Source: Miroudot and Shepherd, 2016.

Trade costs are high in part because of the characteristics of services: trade often requires movement of people and/or establishment of a commercial presence (FDI). This implies that many policies and their administration may impact on trade costs. Two dimensions are important in this regard: (i) regulatory policies that apply to all firms, both national and foreign; and (ii) policies that are designed to discriminate against foreign providers or consumption abroad. Policy is a major determinant of the costs incurred by service suppliers to contest foreign markets. In some cases, policy simply prohibits foreign sourcing, in others measures greatly reduce the scope for trade to occur – e.g., through the application of economic needs tests or quotas applying to foreign services suppliers. Whatever the policy stance of a government and the regulatory measures that condition access to a market by foreign suppliers, there will be procedural and administrative requirements that must be satisfied. As is true for procedures that apply to goods crossing borders, there will be costs for services providers in complying with regulatory policies. These costs go beyond fees and charges for documents or certification and

conformity assessment and the time needed to do so. Costs will also arise if there is inadequate information and transparency regarding the applicable measures and uncertainty whether services provision will be authorized.

Regulatory policies vary across countries for any given sector and the resulting heterogeneity is an important source of international trade costs (Nordås, 2016; Miroudot and Shepherd, 2016; OECD, 2017; WTO, 2019). As illustrated in Figure 2 the problem for firms is that they must address a set of idiosyncratic regulatory requirements in each market they wish to contest. The associated costs for each market increase overall production costs at the level of the firm and prevent them from capturing economies of scale or scope. There are several dimensions relevant here: (i) (asymmetric) information on the applicable rules and requirements; (ii) the associated certification/conformity assessment processes; and (iii) uncertainty/variability in administration of (i) and (ii). These factors generate trade costs even if regulation is applied on a nondiscriminatory basis.

Figure 2: Impact of regulatory heterogeneity on firm-level average costs

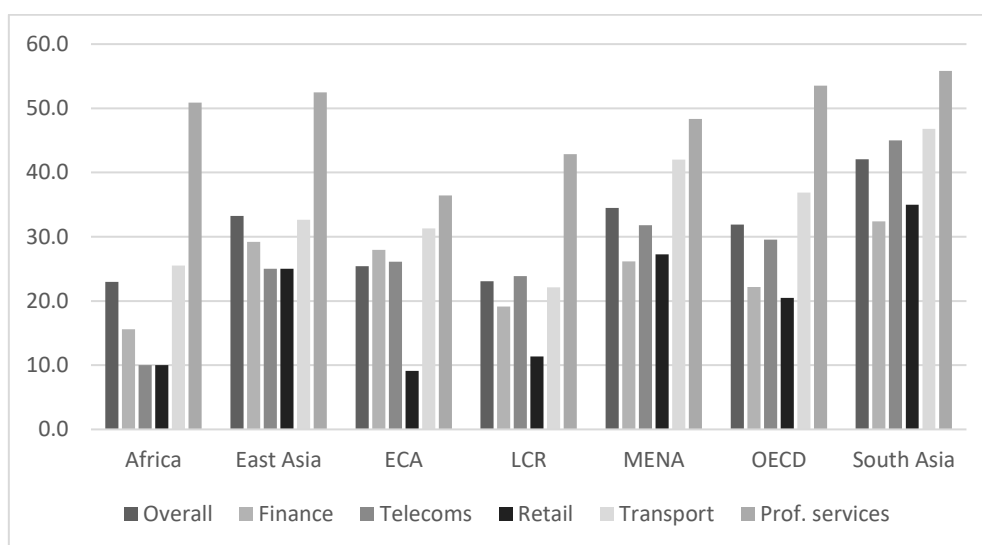


Source: Kox and Lejour (2005)

High services trade costs in part reflect regulatory policies may discriminate against foreign providers. Examples include nationality requirements or banning access to markets as is the case in many countries for segments of the transport, communications or professional services sectors. Research has shown that barriers to trade and investment in services are often much higher than for goods (Jafari and Tarr, 2017). Although information on services trade policy is limited, new datasets have been developed recently that characterize the restrictiveness of services trade and investment policies (Borchert, Gootiiz, and Mattoo 2014; WTO, 2019). The World Bank's Services Trade Restrictiveness Index (STRI) reveal that barriers to trade in services are substantial (Figure 3).³ More recent data on services trade policies for a smaller set of countries confirms that barriers to trade in services are substantial, with significant heterogeneity across countries and sectors (Figure 4).

Research has mostly focused on the effects of services trade policies and domestic regulatory measures – see e.g., Mustilli and Pelkmans (2013). There is limited analysis of the extent to which administrative procedures and compliance costs are a factor, and thus not much of a basis on which to determine the potential payoffs from efforts to facilitate trade in services if defined analogously to what is covered by the TFA.

³ See Services Trade Restrictions Database at <http://iresearch.worldbank.org/servicetrade/aboutData.htm> and OECD, Services Trade Restrictiveness Index at <http://www.oecd.org/tad/services-trade/services-trade-restrictiveness-index.htm>.

Figure 3: Services Trade Restrictiveness Indices across Regions, 2008

Notes: ECA: Europe & Central Asia, LCR: Latin America & Caribbean; MENA: Middle East & North Africa.

Source: World Bank Services Trade Restrictiveness Indicators database.

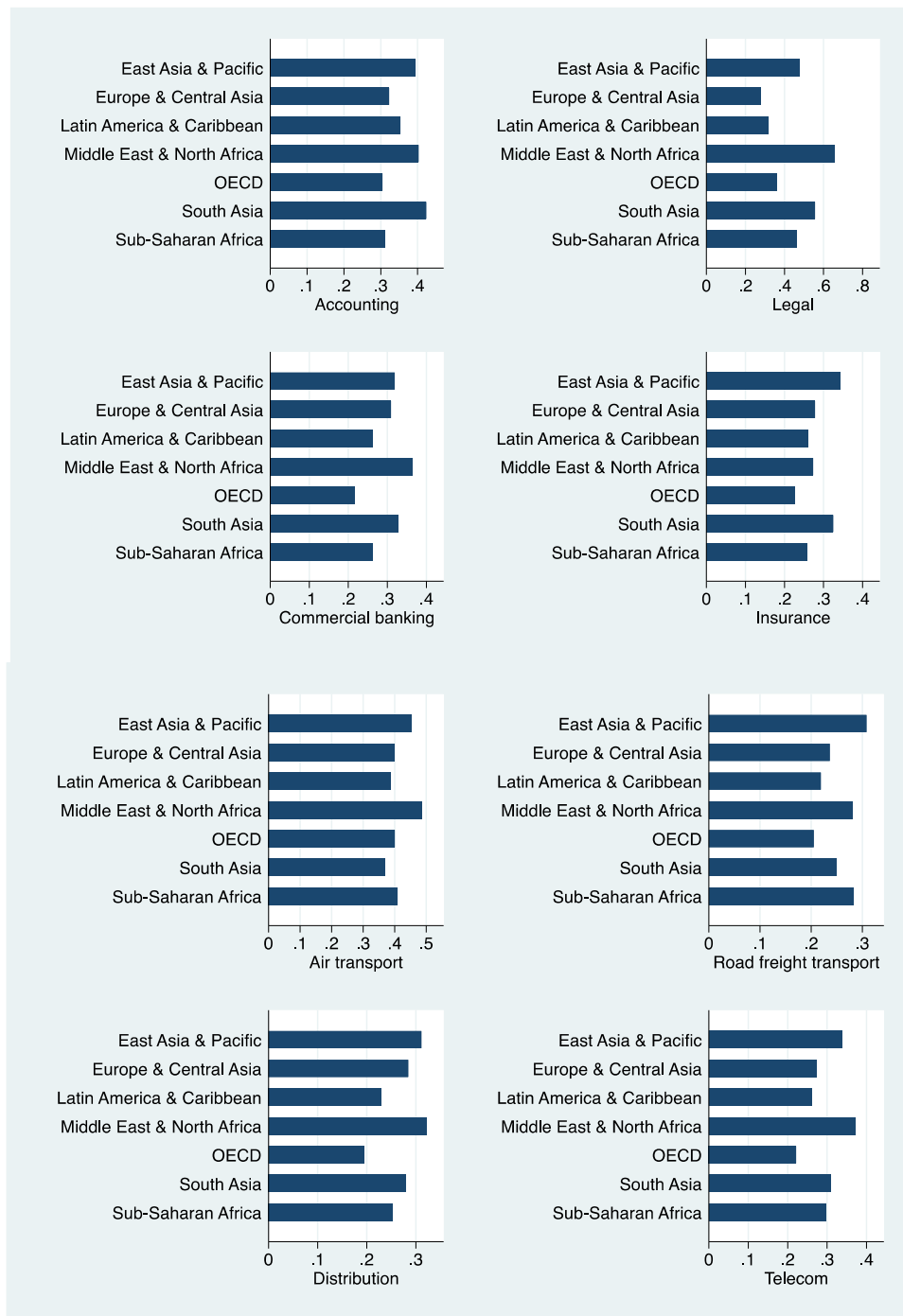
Research on the effects of STRIs suggests that there are important interactions between policies that restrict trade in services and the quality of domestic regulation. This in turn implies that a focus on trade facilitation can have substantial payoffs. Beverelli, Fiorini and Hoekman (2017), for example, assess the impacts of STRIs on the economic performance of firms. Using the World Bank STRIs and industry-level data for a sample of 57 countries they estimate the relationship between services trade openness (STRI levels) on the productivity of downstream manufacturing industries. They find that the effects of services trade restrictions depend on the quality of domestic economic institutions. Thus, identical STRI levels for a sector in two countries may have very different impacts on the productivity of downstream sectors if the quality of economic governance, as proxied by indicators such as control of corruption and rule of law, differs a lot. Improving economic governance – reducing uncertainty, redundant red tape and transactions costs – significantly increases the potential gains for an economy of services trade liberalization. Taking prevailing market access policies (STRIs) as given, lowering transactions costs by improving economic governance performance can substantially lower the negative welfare effects of whatever the level of prevailing market access barriers.

How much of overall services trade costs are due to explicit barriers as captured by STRIs as opposed to regulatory quality and regulatory heterogeneity will depend on sectors and country policies. For purposes of this paper what matters is that lowering services trade costs can be pursued by:

1. reducing or eliminating formal (explicit) barriers to trade (as captured in the STRIs);
2. working to attenuate the prevalence of regulatory heterogeneity across countries for given sectors or activities; and
3. by taking actions to lower the costs for firms of complying with whatever regulatory policies apply to providing services across border.

The last two axes are the focus of what follows, with trade facilitation in services (TFS) defined to span measures to reduce the costs associated with cross-border supply of services, taking the level of services trade policy restrictions as given. Thus, trade facilitation does not involve trade liberalization, i.e. reducing the level of discriminatory policy barriers that apply to non-nationals.

Figure 4: Average Services Policy Index by sector, developing region and OECD, 2016



Note: The services policy index is a measure of the restrictiveness of prevailing policies.

Source: Hoekman and Shepherd, 2019.

2. Some lessons from the TFA negotiation experience

The primary focus of trade facilitation efforts to date has been on actions to lower the costs of clearing customs and moving physical goods across borders. Many such measures are included in the WTO

TFA.⁴ These include provisions pertaining to ensuring transparency via publication of information (requirements to publish regulations on trade procedures, taxes, fees, etc. and use of e-portals and websites) and creation of national enquiry points to provide traders with information on applicable regulatory requirements. The TFA calls for providing traders and trading partners with the opportunity to comment on proposed new regulations relating to movement, release, clearance etc. of goods and mechanisms to request advance rulings on a timely basis regarding tariff classification and origin criteria. There are also provisions to permit appeal and review of decisions on Customs matters and other border management agencies relating to release and clearance of goods. The agreement embodies many good practices, including pre-arrival processing of consignments, separation of release of goods from final determination of payment liability, use of risk management systems and post-clearance audits; facilitation of “authorized operators” with a track record of compliance; consideration of so-called “Single Window” systems; and cooperation between customs agencies to exchange information on consignments.

As this brief summary suggests, the specific provisions of the TFA are often quite detailed and technical, reflecting extensive analytical work and deliberation in the international Customs community that led to a common understanding of areas where improvement was needed and what constitutes good practice. Many of the substantive disciplines build on work done in the World Customs Organization (WCO)—in particular provisions on appeal and review and release and clearance of goods. In the 1990s, WCO members negotiated a revision of the 1974 International Convention on the Simplification and Harmonization of Customs Procedures. An updated and completely revamped Kyoto Convention establishing ‘international standards and facilitative customs procedures for the twenty-first century’ was completed in 1999. This comprised a set of principles and detailed annexes that lay out standards and recommended best practices for customs procedures and related administrative practices, including risk assessment, electronic data interchange, use of ex-post, audit-based systems of control, import and export procedures, transit arrangements, and bonded warehousing.

Extensive diagnostic work and projects undertaken by international development banks, the ITC and UN bodies (UNCTAD and the UN Regional Economic Commissions) complemented work in the WCO context. The international development organizations had wide-ranging experience in the design and implementation of trade facilitation projects. An important contribution of the epistemic community that existed on issues associated with trade facilitation was to provide objective professional expertise and advice on good practices and areas in which cooperation would benefit everyone. Broad agreement among experts on what constituted good practice in the enforcement of customs law and regulation greatly facilitated the conclusion of the TFA negotiations (Hoekman, 2016). The work of regional and multilateral organizations played an important role in helping to inform the consensus that emerged regarding good practices. It also helped to generate information on the “gap” between the status quo prevailing in developing countries on customs and transit policies and the various good practices that were the main focus of TFA talks.⁵ The creation of an “epistemic community” of practitioners and stakeholders was a major factor in the success of the negotiations in helping to create a common

⁴ See Hoekman (2016) for an extensive discussion of the TFA.

⁵ Significant resources and effort was devoted to this. The type of technical material generated by development organizations on trade facilitation is illustrated by the reports and toolkits posted on the website of the Global Facilitation Partnership for Transport and Trade (<http://www.gfptt.org/documents>) before the Bali Ministerial meeting where the TFA was agreed. They include: The New Frontier of Competitiveness in Developing Countries: Implementing Trade Facilitation; Trade Facilitation and Paperless Trade Implementation; Developing a Trade Information Portal; Border Management Modernization; Trade and Transport Facilitation Assessment: A Practical Toolkit for Country Implementation; Risk-Based Compliance Management; Preparation of a National Single Window; Trade and Transport Corridor Management Toolkit; Post Clearance Audit: Reference and Implementation Guide; Collaborative Border Management: A New Approach to an Old Problem; Freedom of Transit: UNCTAD Trust Fund for Trade Facilitation Negotiations Technical Note; Paperless Trade in International Supply Chains: Enhancing Efficiency and Security; Behind the Border Trade Facilitation in Asia-Pacific: Cost of Trade, Credit Information, Contract Enforcement and Regulatory Coherence; Trade Facilitation Opportunities for Landlocked and Transit Developing Countries.

understanding of what the issues were and why they mattered, as well as what constitutes good practices in reducing compliance costs for traders without undermining the realization of underlying regulatory objectives.

A unique feature of the TFA is how it addresses differences in implementation capacity, preferences and national priorities. Although the TFA applies to all WTO members, individual developing country governments defined for themselves when they would implement specific provisions, distinguishing between those commitments that simply require more time to implement and those where implementation is made conditional on the provision of technical assistance from high-income members and the international community. This innovative approach towards operationalizing special and differential treatment allowed the TFA to become a multilateral WTO agreement that applies all members. Thus, the rules apply in principle to all countries, but each (developing) country defines for itself when specific provisions will be implemented and whether this is conditional on receiving assistance. If this is requested and not provided the associated provisions of the TFA – insofar as they are binding as opposed to best-endeavour commitments – cannot be enforced through the WTO dispute settlement mechanism.

3. Facilitating trade in services: the 2016 Government of India WTO proposal

As mentioned, the TFA pertains to goods only. In 2016, the Government of India put forward a proposal that the WTO membership consider an analogous initiative on Trade Facilitation in Services (TFS). A succinct concept paper (Government of India, 2016a) submitted to the WTO Working Party on Domestic Regulation was followed by a more fleshed out proposal that discusses several proposed elements of a TFS agenda (Government of India, 2016b). India's motivation for the proposal was to complement the TFA, which only pertains to Customs-related procedures and processes applied when goods cross borders. The basic idea was to launch a process to explore and agree on measures to facilitate trade in services, with a focus on enhancing transparency, streamlining procedures, and removing redundant red tape and bottlenecks associated with the administration of regulatory policies that apply to services trade. A premise of the proposal was to take existing trade-restrictive and domestic regulatory measures as given. The aim was not to consider the substance of domestic regulation or to seek to lower explicit barriers to trade in services, but to reduce the costs of regulatory heterogeneity and the processes associated with implementation of services trade policies through actions to lower administrative costs: i.e., to facilitate trade.

The Indian proposal suggested a TFS initiative cover policy measures pertaining to all four modes of supply as well as the implementation of sector- or mode-specific policies.⁶ It also foresaw inclusion of special and differential treatment (SDT) provisions for developing economies, building on the precedent established by the TFA. Subjects suggested for discussion included potential rules relating to taxes, fees, and other charges on services supply or suppliers; putting in place mechanisms to allow WTO members to comment on proposed new regulatory measures pertaining to trade in services; measures to enhance access to information on applicable regulation, including through electronic means, and more generally to increase the transparency of the application of services trade-related policies; and domestic review-type mechanisms to provide opportunities for suppliers to raise issues related to the administration of measures and the pursuit of regulatory cooperation by the authorities.

The areas suggested for discussion and possible disciplines and/or cooperation are all relevant from a TFS perspective. Although the likely economic impact of will depend on the level of prevailing trade barriers, for modes and sectors with cumbersome regulation, trade facilitation measures can have a direct

⁶ The WTO distinguishes between four “modes” through which trade in services can occur: cross-border via ICT networks and the internet (Mode 1); movement of a consumer to a foreign country where the service provided (Mode 2); through commercial establishment of a firm in a foreign country (Mode 3); and via cross-border movement of natural persons (Mode 4).

positive effect on foreign suppliers. The deliberations that informed the process of operationalizing the WTO services waiver (permitting granting of preferences to LDCs) illustrated that a key constraint for LDC suppliers are visa and related documentary requirements to be able to enter a country – whether to search for services sales (export) opportunities or to provide services. Mode 4 trade tends to be highly restricted (see e.g., Chanda, 2009; 2016) and compliance with administrative requirements costly, especially for small firms. Visa fees are often very high relative to average per capita incomes of source countries and, there is frequently great uncertainty whether the investment of time and money will result in obtaining a visa, making it more difficult than necessary for developing country services providers to export (Drake-Brockman et al. 2016).

India's proposal on TFS found little traction among WTO membership. One reason may have been the then prevailing negotiating context and perceptions among some WTO members that India was seeking to divert attention from other matters⁷ and that the proposal was not one that the government stood behind. Putting forward a draft text very shortly after having circulated its initial concept note may have been interpreted as signalling that India was not serious about the proposal. The fact that India had devoted little effort to prepare the ground and build a coalition of WTO members around its proposal helps explain the lukewarm reception the proposal received. A serious effort to build support for the proposal by a group of countries ("friends of services trade facilitation") could have improved the prospects for adoption of the proposal.

4. Post-2017 developments: from multilateral to plurilateral initiatives

India's TFS proposal presumed any agreement would be multilateral in the sense of applying to all WTO members, analogous to the TFA. In 2017 many WTO Members concluded that launching new initiatives in the WTO was only feasible on a plurilateral basis. In the December 2017 WTO Ministerial meeting in Buenos Aires, several plurilateral "joint statement initiatives" were launched. These span e-commerce, investment facilitation, and measures to enhance the ability of micro and small and medium enterprises (MSMEs) to utilize the opportunities offered by the rules-based trading system.⁸ In parallel, plurilateral talks are being pursued to agree on disciplines on domestic regulation of services. India, along with many developing countries, did not join any of these groups and made clear its opposition to plurilateral negotiations under auspices of the WTO.⁹

An interesting dimension of the joint initiatives is that services play a prominent role. The characteristics of services means trade often requires a physical presence (mode 3), so that investment facilitation is an important part of facilitating trade in services. Cross-border trade in services via the internet or telecommunications networks (mode 1) is a central element of e-commerce agenda. Domestic regulation of services involves an agenda centred on reducing the costs associated with complying with services regulation – a core element of facilitating services trade. Although some of the groups, notably that dealing with e-commerce, include a focus on market access barriers, much of what is being

⁷ The decision by India to hold up the incorporation of the TFA into the WTO by seeking to link its approval for doing so to greater action by WTO members to address India's concerns on agricultural policies may have played some role in how other WTO members responded to the proposal. See https://www.business-standard.com/article/economy-policy/india-vetoes-wto-trade-facilitation-deal-114070301095_1.html.

⁸ https://www.wto.org/english/news_e/news17_e/minis_13dec17_e.htm.

⁹ The WTO permits preferential trade agreements (PTAs) that cover substantially all trade of signatories and do not increase external rates of protection. In addition to discriminatory PTAs, the WTO permits members to negotiate so-called critical mass agreements where benefits or outcomes apply to both participants and non-members and Plurilateral Agreements that apply only to signatories and where benefits are extended only to participating countries. The latter must be approved by all WTO members. Insofar as the Buenos Aires joint initiative talks result in agreements that are applied on a nondiscriminatory basis by signatories they will add to existing critical mass agreements such as the Information Technology Agreement. See Hoekman and Mavroidis (2015; 2017) for in-depth discussion of plurilateral cooperation options under the WTO.

discussed in the groups on e-commerce, investment and domestic regulation concerns matters that are very relevant from a services trade facilitation perspective.

The E-commerce talks span 77 WTO Members and focus on (i) restrictive policies and (ii) digital trade facilitation.¹⁰ Rules on digital trade restrictions policies will be difficult to agree given differences between EU, China and US on issues such as data privacy, the necessary regulatory conditions that must be satisfied for freedom of cross-border data flows, or the need for data localization requirements. Agreement more likely to be feasible on provisions to facilitate digital trade: e.g., use of electronic signatures, e-invoicing; facilitating electronic payment for cross-border transactions; policy transparency or measures in the area of consumer protection (e.g., relating to fraud).

Domestic regulation talks involve 56 WTO Members and address matters associated with authorization and certification of foreign services providers (licensing, qualification, and technical standards), not on substance of regulations. While some WTO members would prefer to include a substantive commitments that reduce the trade-impeding effects of domestic regulation, such as a “necessity test” or language calling for countries to adopt regulations that minimize trade restrictive effects (“least trade restrictiveness” language), the experience of previous efforts in the WTO to get agreement on such principles – which are included in some WTO agreements pertaining to regulation of tangible products – suggests that talks will focus on trade facilitation: publication and availability of information; enquiry points; timeframes for processing of applications; acceptance of electronic applications and basic principles: e.g., transparency of regulations; objective criteria; reasonable fees; and ensuring that authorizing bodies are independent and/or impartial and decisions can be appealed.

The investment facilitation group was launched by 70 WTO Members. At the time of writing the group encompasses some 90 WTO members.¹¹ The agenda does not include liberalization of inward FDI policies or measures related to protection of foreign investors. The focus is solely on facilitation. All investment is covered, including services, i.e., facilitation of mode 3 is part of the discussion. Talks focus on “good regulatory practices” such as transparency and predictability of investment-related policy measures; streamlining administrative procedures and requirements; international cooperation, information sharing, and exchange of best practices (learning) by bringing together stakeholders within countries concerned with FDI. These focus areas draw on efforts in the OECD and APEC, among other organizations, to define general good regulatory practices (OECD, 2017; Basedow and Kauffmann, 2016), which call for mechanisms for consultations with stakeholders; soliciting feedback on proposed regulatory measures, ensuring transparency of the regulatory process and the rules that apply, assessments of the expected net benefits of regulatory measures, and ex post impact evaluation of their implementation.¹²

The joint statement initiatives and the parallel plurilateral discussions on domestic regulation of services imply that at least in part the TFS agenda is being taken forward in the WTO by groups of participating WTO members. Taken together, if successful, the resulting plurilateral initiatives will facilitate trade in services. There is also scope for the talks on enhancing ability of MSMEs to trade to result in measures that facilitate trade by assisting the ability of services MSMEs to sell their products across borders. Whether this will be the case is not known given that talks are ongoing but there is nothing preventing participants from putting forward proposals for initiatives that will do so. This leads to two questions. First, to what extent will what emerges from the different groups benefit non-

¹⁰ For a summary of the issues that have been tables by different participants, see <https://etradeforall.org/wto-members-submit-proposals-aimed-at-advancing-exploratory-e-commerce-work/>.

¹¹ https://www.wto.org/english/news_e/news19_e/infac_05nov19_e.htm. See Echandi and Sauve (2019) for an assessment of the issues being discussed.

¹² Good regulatory practices do not address the specific features of service sector regulation or provide guidance on different approaches to implementing regulatory provisions in ways that would reduce burdens on services traders

participating countries? Second, how much of a facilitating trade in services agenda will be embedded in the joint statement initiatives?

The answer to the first question depends in part on whether the results of the initiatives are applied on a nondiscriminatory basis and in part on what non-members do. It is likely that the trade facilitating dimensions of any new plurilateral agreements will be extended to all countries, given that the policies involved are regulatory in nature and thus apply to all firms, whatever their origin. If so, their plurilateral nature will not come at the cost of non-participants. Nevertheless, the commitments that are negotiated and agreements on what constitutes good regulatory practice will be determined by those countries that engage in the talks. The absence of most developing countries from the table may result in matters of interest or concern from a development perspective not being addressed by the groups. Although nonparticipating countries will retain policy space, including the freedom to join a group subsequently or to unilaterally implement whatever is agreed by a group, there may be a significant opportunity cost associated with decisions not to engage in these plurilateral processes. This is directly relevant to the second question, what will the groups do to push forward a services trade facilitation agenda – and what more might they do?

5. Gaps from a TFS perspective

Important components of what one might otherwise expect a services facilitation agenda to address are not on the table in any of the joint initiative groups. One such component concerns policies affecting mode 4 services trade. Issues relating to facilitating visa processes (fees, multiple entry, timeliness, etc.) are not being discussed in the extant groups. Beyond mode 4, it may also be the case that the different groups may do less than what would be desirable from a TFS perspective when it comes to (i) increasing transparency of applied services regulations and (ii) taking actions to reduce the costs of regulatory heterogeneity through support for international regulatory cooperation at sector level.

Transparency. A necessary condition for facilitating trade is reducing the costs for services suppliers associated with satisfying regulatory requirements, streamlining procedures and eliminating bottlenecks. This can be done by giving suppliers access to simple to use and comprehensive information on both the applicable standards and associated certification processes and restrictions on the ability of foreign providers to enter a market. For example, if there are nationality or residency requirements or limits on what foreign firms can offer this information needs to be easily accessible. Regulation spans not just country-wide regulatory policies that apply to all modes/firms but also measures that operate at the local level, including the quality of local economic governance (business environment). For services trade, policies of large cities/metropolitan agglomerations may matter as much as those applied at the national level.

There are no comprehensive notification requirements for domestic regulation in General Agreement on Trade in Services (GATS). Signatories schedule sector-specific market access commitments and indicate where national treatment restrictions apply but are not required to make available in one place data on what technical standards apply and what foreign suppliers must do to obtain authorization to practice. It is not clear if and to what extent this will be addressed in the domestic regulation talks. Good practices in this regard go beyond establishment of ‘enquiry points’ where firms can ask about what is required to putting in place systems through which firms are actively assisted by trade and investment promotion bodies agencies that help them understand local operating conditions. Here there are potential synergies with the subjects addressed by other plurilateral groups, notably those on investment facilitation and MSMEs.

Particularly salient from a transparency perspective are mechanisms through which foreign firms can provide feedback to authorities about whether and how easy it is to get accurate information on what is needed to participate in a market. The WTO does not have a comparative advantage in this regard as the approach to transparency is centred around a “notification mindset” – reflected in numerous provisions

in WTO agreements requiring governments to notify policies and changes in policies to the WTO secretariat. This is important but can be slow and may only imperfectly reflect conditions that prevail “on the ground.” On this front it is firms that have up-to-date information on what in practice is needed to satisfy regulatory requirements and whether governments live up to transparency commitments. Options to mobilize such granular, real-time, information have been developed by many countries and have become simpler to implement as a result of new technologies. In the goods trade facilitation context systems have been put in place to allow traders to transmit information to the relevant authorities, e.g., through smartphone apps or “voting” type systems where satisfaction can be expressed regarding the quality of entry and clearance processes. Regular surveys of firms are another means of collecting data and assessing facilitation performance. International agencies that work with both governments and the private sector such as the World Bank Group and the International Trade Centre (Geneva) can assist countries put in place such systems for services providers and in the process help stakeholders to provide information needed to establish baseline trade facilitation performance metrics and monitor progress over time in facilitating trade in services.

Quality of regulation and regulatory heterogeneity. A major element of facilitating trade in services is to enhance the quality of regulation and related institutions, and to reduce the costs for firms that are created by differences in regulatory requirements for a given service across jurisdictions. Transparency will help do so to some extent by clarifying what is required in each jurisdiction but will not reduce market-specific compliance and certification-related costs. Such costs may additionally be influenced by regulations affecting access and use of goods needed for the provision of services that differ across countries. Reducing the costs of regulatory heterogeneity calls for proactive efforts by governments to cooperate. As noted, this need not extend to liberalization in the sense of pursuit by governments of ‘deregulation’ by trading partners and thus continues to fall under the umbrella of ‘facilitation’.

Such facilitation can be pursued through various channels. Governments can pursue different types of regulatory cooperation efforts, ranging from sector-specific initiatives such as mutual recognition agreements (MRAs) to cross-sectoral, horizontal efforts that revolve around basic ‘good practice’ principles such as consultations with stakeholders and use of impact assessments to learn from (international) experience and more formal mechanisms to converge over time on the substance of new regulatory norms (harmonization and international standardization). All these types of cooperation can reduce compliance costs for firms but also enhance the effectiveness and efficiency of regulation.

Regulatory cooperation can be characterized along a spectrum from “soft” to “hard” depending on how binding (enforceable) any commitments. Efforts to increase coherence across regulatory regimes are an example of “soft” cooperation. They have been a central element of international initiatives on regulation pursued in the OECD and APEC, which focus on principles and processes as opposed to the substance of regulation. An example would be to agree to inform partners about new regulatory initiatives, or to create processes through which parties consult each other and provide opportunities for comment before adopting new regulations. Whether or not a country implements the principles or good practices will not have a direct effect on the realization of regulatory goals in another nation.

The GATS includes a provision on domestic regulation but nonetheless has fewer disciplines for regulations affecting services than pertain for goods (product regulation). Article VI.4 of GATS calls on the Council for Trade in Services to develop any necessary disciplines to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, and Members may not apply regulatory requirements so as to nullify or impair specific commitments made for sectors/modes (Article VI.5(a)). The GATS has no obligation to use international standards if these exist – WTO Members may use whatever standards they wish.

GATS Article VII (Recognition) promotes the establishment of procedures for (mutual) recognition of licenses, educational diplomas and experience granted by a Member. It permits a Member to recognize the standards of one or more Members, but does not require, or even encourage, Members

recognize equivalent foreign regulations. Article VII:2 requires a Member who enters into a mutual recognition agreement (MRA) to afford adequate opportunity to other interested Members to negotiate their accession to such an agreement or to negotiate comparable ones. Article VII:3 stipulates that a Member must not grant recognition in a manner which would constitute a means of discrimination between countries. Members must inform the Council for Trade in Services about existing MRAs and of the opening of negotiations on any future ones. Most such notifications pertain to the recognition of educational degrees and professional qualifications obtained abroad.

The WTO does little at present to support regulatory cooperation on a multilateral basis; the focus has been on national policies. A feature of the GATT agreements on product market regulation – the agreements on technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) is that these go beyond the basic national treatment (nondiscrimination) requirement for product regulations to call for measures to be science-based and incorporate risk assessment principles. Moreover, both agreements encourage the use of international standards where these exist. In the SPS area such standards are set by the Food and Agricultural Organization’s Codex Alimentarius Commission. For industrial products there are a plethora of international bodies that are fora in which international standards are set. There is much less in the way of international standards for services (Hoekman and Mavroidis, 2016).

An illustration of this is that the International Organization for Standardization (ISO) issues very few standards for services activities. Most of its services standards are limited to “back end” infrastructure. There is very little in the way of substantive standards pertaining to service provision and suppliers: fewer than 2% of ISO standards deal with services (Weissinger, 2019). Stimulating demand for international standards for specific services activities could be one avenue to facilitate services trade over time. The ISO is demand-driven – it does not pursue standardization unless this is demanded by stakeholders. Such demand may increase if it is encouraged through a WTO agreement on domestic services regulation and/or on e-commerce in which signatories agree to cooperate in setting international standards as a means to facilitate services trade. The ISO modus operandi is very open and multilateral in nature, with any interested country being able to participate – providing a channel for countries that have decided not to join the WTO plurilateral talks to nonetheless engage in efforts to facilitate trade in services.

The focus of domestic regulation discussions is horizontal, on ‘good regulatory practices’ in general as opposed to being sector- or activity-specific. This provides a potential opportunity for subsets of countries to pursue sectoral plurilateral agreements to complement the WTO domestic regulation initiative. Platforms and dialogue to identify where this could facilitate trade enough to offset associated transactions costs are a necessary input into any such efforts. A key element of the TFA was its focus on defining what constitutes good practices. As already noted, the TFA built on years of deliberation in the WCO as well as extensive experience obtained in the GATT reflected in separate agreements on product standards (TBT, SPS), customs valuation, import licensing, transparency-cum-publication requirements. There is no WCO analogue for services and much less in the way of already existing disciplines and practice that have a bearing on facilitation of services trade. Nor is there the type of epistemic community that exists in the area of customs and facilitation of trade in goods.

A first order challenge in operationalizing a services trade facilitation agenda is to identify and put in place mechanisms for deliberation, learning and consensus-building needed for a common understanding of what can effectively facilitate trade without negatively affecting the ability of a government to attain its regulatory goals. This must include consultations and regular interactions with the services business community and regulatory bodies. Such deliberation will need support and active involvement by international organizations with knowledge on what trade facilitation means in the services context. A concerted effort to define and collect data on baseline performance indicators, prioritize areas for action and monitor the effects of trade facilitation efforts over time must go beyond the WTO secretariat. Cooperation between the major development organizations is also important for implementation TFS measures as these are likely to require investment in training and capacity building. The analytical work done by international organizations and the research community on trade facilitation

in goods demonstrated that measures of the type being considered – and eventually embodied in the TFA – would contribute to better trade performance and generate welfare gains. The same is needed for efforts to inform the design of international TFS initiatives. Analysis, deliberation and learning about what constitutes good practice in the area of services trade facilitation either can feed into the extant plurilateral groups or inform complementary efforts to address policy areas that are not being – or cannot be – addressed through these groups.

6. Filling the TFS gaps: a role for the G20?

In their 2015 meeting in Antalya, G20 leaders called on their trade ministers to meet on a regular basis and to create a G20 Trade and Investment Working Group (TIWG). The TIWG provides a forum for coordination and cooperation across the organizations, and for G20 members to tap into their expertise and resources. The TIWG includes representatives of the OECD, UNCTAD, the World Bank as well as the WTO. As a result, it has acted as a coordination device to support collaboration between international organizations active in trade and investment related areas. Activities of the TIWG have centred on the importance of reducing trade costs for the operation and design of global value chains (GVCs) and on policies for enhancing participation of developing countries and MSMEs in international production networks. A specific area addressed by the TIWG during 2015-2017 was investment facilitation, a subject that spans work programs in all the organizations involved in the group and that was not covered by WTO rules or the Doha round negotiations. TIWG deliberations helped prepare the ground for the launch of plurilateral discussions on e-commerce, MSMEs and investment facilitation in the WTO, illustrating that the G20 has been able to influence the launch of initiatives on subjects that could not be addressed on a multilateral basis in the WTO.

From a TFS perspective, efforts in the G20 (TIWG) could focus on two areas. The first is to encourage greater participation in the plurilateral initiatives launched in 2017, as all the subjects covered are important for developing economies. An important question is why many developing countries decided not to participate in the plurilateral talks at the WTO. Most African countries are not part of the talks. Investment facilitation has attracted the most broad-based engagement, but in the MSME group the only African member is Kenya, while Nigeria is the only African country that signed the initial joint statement on e-commerce. India is not a participant in any of the four groups. Expanding participation calls for more than simple advocacy. Providing targeted assistance, both financial and technical, through EU member state development agencies and aid-for-trade provided by the European institutions, working in tandem with the relevant international organizations, can help address participation concerns and constraints. The importance of this was illustrated in the TFA negotiations and applies as much if not more to the policy areas covered by the joint initiative groups. This is an area where policy coherence calls for development assistance to accompany trade initiatives.

Aside from fostering broader-based participation in current plurilateral negotiations-cum-deliberations, a second priority from a systemic services trade facilitation perspective is to identify how the different agendas of the various joint initiative groups connect to each other and determine major gaps that are economically significant from the viewpoint of TFS. Some of these gaps are clear and well known—e.g., the cost of administrative procedures pertaining to service suppliers that affect their ability to explore market opportunities or provide services. This calls for analysis of policies and regulatory requirements that give rise to significant transaction costs for foreign suppliers and determining whether these are – could be – on the table in the plurilateral initiatives and where complementary activities could help make a difference.

Focusing on enhancing policy coherence – filling gaps and preventing redundancies and overlaps in rule-making efforts – and tackling the issue of how the WTO deals with economic development differentials are two possible areas where the G20 could play a useful role in supporting multilateral cooperation and the trading system.

Coherence. Echandi and Sauve (2019) point out that the segmented nature of discussions on services regulation and investment facilitation may contribute to potential rule-making overlaps between envisaged new disciplines in these two areas, both of which simultaneously address the services facilitation agenda. It is important that discussions on trade and investment facilitation in services enable policy makers to address issues that are common to the different WTO plurilateral negotiating groups in an integrated manner. In a similar vein, efforts to facilitate services trade can be important for facilitating trade in goods. Ensuring competition in the provision of transport, logistics/distribution and communications services, policy areas not covered by the TFA, can have major positive trade facilitation effects for goods. This gap can be addressed by giving national trade facilitation committees (NTFCs) a mandate to consider the trade cost effects of services policies and their administration. Doing so does not entail re-negotiating the TFA. Leveraging implementation of the TFA at national level to include a focus on services trade as well as trade in tangible products is something that countries can do unilaterally. Thus, good regulatory practices identified through deliberations on how to pursue TFS could be placed on the agenda of NTFCs by governments desiring to do so. A country-specific unilateral approach is the most direct channel for countries seeking to facilitate trade in services, increasing the national “rate of return” on implementation of the TFA.

Special and differential treatment. An important factor underlying the difficulties experienced in using the WTO as a platform for negotiations to update the rulebook and combat protectionism is insistence by many developing countries on SDT: less than full reciprocity in trade negotiations and acceptance that developing nations should be less constrained in the use of trade policies than high-income countries. A central feature of SDT is that it applies to all developing countries. The WTO does not define what constitutes a developing country, leaving it to members to self-determine their status. This has long been a source of contention. Periodic suggestions or efforts to consider adoption of criteria to differentiate between countries and determine when graduation should occur have never found traction. However, traditional SDT is no longer acceptable to OECD member countries who argue that large emerging economies such as China and India need to accept greater reciprocity. Conversely, many developing countries take the position that SDT is a vital feature of the WTO to which they attach great importance.

While major differences in views exist on the need to retain the ability of any country to self-declare itself as developing and invoke SDT, experience suggests this is not as binding a constraint as it sometimes is made out to be. Much has already been achieved in terms of revisiting how economic development differences are recognized and addressed in the WTO. Notwithstanding the rhetoric by opponents and proponents of traditional SDT, the building blocks for a more differentiated approach towards addressing economic development disparities have already been put in place. In practice differentiation has been negotiated on an issue-specific basis. The flexible approach taken in the 2013 TFA towards scheduling of commitments by developing countries and the opportunity it offers for developing countries to link implementation to technical assistance illustrates how an issue-by-issue approach aimed at building a common understanding on what types of policies make sense (constitute good practice) while recognizing that differentiated implementation paths may be needed and be appropriate. What is needed is acceptance by the large emerging economies that SDT can no longer be invoked by them looking forward. In 2019 Brazil indicated it would not invoke SDT for new WTO agreements. A similar decision by India and China would do much to address the concerns of OECD member countries. This does not imply that these countries are no longer developing. What it does imply is a shift in focus to these countries negotiating specific provisions that reflect their interests and circumstances—something that OECD member countries also do. This is very much a subject for the G20 given that the key countries are all G20 members and, except for Brazil, have vigorously opposed efforts to revisit the principle of SDT.

7. Conclusion

The 2016 Indian TFS proposal aimed at establishment of a new WTO agreement along the lines of the TFA. This would be universal, apply to all WTO members, and, as in the TFA, leave implementation flexible for developing countries and make available technical assistance for implementation. This vision may materialize at some point, but since 2017 negotiating energy is being put into plurilateral talks. For the time being, plurilateral cooperation is the most that is feasible. An implication is that supporters of efforts to complement the WTO TFA with analogous instruments to facilitate trade in services need to ensure that the various plurilateral initiatives include as much as possible a focus on matters that are relevant from a TFS perspective, and to push that eventual agreements apply on a nondiscriminatory basis and are open to all WTO members. A common feature of all four policy areas being discussed under WTO auspices is that they cover much of the TFS agenda. Participating in the plurilateral talks is therefore the most direct means of pursuing TFS objectives. Not doing so implies not being able to influence the content and outcome of whatever may be agreed.

A major advantage of the current open plurilateral (club) approach to negotiations as opposed to the consensus based TFA model is that a critical mass of likeminded countries can move forward. In the case of services, if clubs agree to a set of good regulatory practices that will help to facilitate trade in services this can be implemented on a MFN basis by club members scheduling whatever has been agreed as additional commitments under Art. XVIII GATS, a provision that reflected the recognition by the drafters of the GATS that clubs were likely going to be a feature of multilateral cooperation on services trade (Hoekman and Mavroidis, 2017). If club members agree certain procedures make sense to implement – that is, constitute good regulatory practices – there no rationale to discriminate in the application of TFS measures. While this may be the case, it is also true that the participating countries will determine the content of any agreements that emerge from discussions. Matters of interest to non-participants may not be addressed.

Although elements of the TFS agenda are being purposed in the plurilateral initiatives, what is on the table is less than what would have been addressed in the TFS proposal put forward by India in 2016. To some extent such gaps could be addressed by including additional TFS elements on the agendas of the different plurilateral groups. However, pursuit of a broader TFS agenda that addresses gaps that are an inherent consequence of the piecemeal approach implied by the extant plurilateral negotiations will require complementary initiatives. A first step to prepare the ground for this would be for services industry associations, sectoral regulators and standards-setting organizations to identify areas where international cooperation could further facilitate trade in services.

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