



REDLAS Conference

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What has inspired the revival of interest in the services area at the WTO?

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Questions:

- **What is behind the renewed discussions in Geneva on services issues?**
- **What areas are the focus of this renewed interest?**
- **Will this lead to a better balance in the WTO between the various negotiating topics?**
- **What are the prospects for an outcome at the MC11 Conference in Argentina in December?**

The Background:

Hiatus on services negotiations at WTO since July 2008 after failure of Signalling Conference

Pro forma meetings but little substance and no negotiating proposals for 8 years

Result of insistence on agriculture first by several WTO Members and a lack of widespread interest in services

Led to the launch of the TiSA negotiations in early 2012 and intensive services discussions outside the WTO

➤ **Momentum began to swing back in 2016!**

Two areas have been the main focus of interest and hold the most promise for results, possibly at the WTO MC11

**DOMESTIC REGULATION
and
ELECTRONIC COMMERCE**

Let's examine each in turn...

DOMESTIC REGULATION

This is not a new issue for the WTO; part of the original GATS – but rules left unfinished

- **Domestic regulation rules in WTO are those under Article VI;** they compliment rules on Market Access (Art. XVI), National Treatment (Art. XVII) and Additional Commitments (Art. XVIII) such as Telecom Reference Paper
- Objective → to gradually liberalize trade in services
 - A Working Party on Domestic Regulation was established in 1999 for the purpose of the negotiations, and replaced the earlier Working Party on Professional Services

Why are GATS Domestic Regulation (DR) disciplines important?

- To ensure that Licensing and Qualification Requirements and Procedures, and Technical Standards do not constitute unnecessary barriers to trade in services by undermining liberalization of market access and national treatment
- Accountancy Disciplines (adopted 1998, S/L/64)
- Work on disciplines on all other sectors still ongoing
- Important progress has been made recently but nothing yet finalized

How can domestic regulation affect trade?

- Can affect the way in which a business operates or a service provider can set up practice (even when non-discriminatory)
- Can be trade restrictive when other regulatory alternatives exist that are equally effective in achieving a given policy objective but have less restrictive impacts on foreign service providers

Mandate of WTO Working Party on Domestic Regulation (WPDR) → to complete and expand the disciplines of GATS

Art. VI.4

State of play in WTO at present:

- Concentrated text-based discussions between 2006-2011
- Chair of WPDR texts of 2009 and 2011 used as benchmarks
- NOTHING between 2011 and 2017
- Proposal by Australia on DR in 2017
- Consolidated text submitted by 18 WTO Members (45 countries with all EU Members counted) in July 2017 being worked on at present

Regulatory disciplines under GATS Art. VI.4 expected to achieve the following:

- Regulations are to be based on objective & transparent criteria
- not more burdensome than necessary to ensure the quality of the service
- in the case of licensing, not in themselves a restriction on supply of service
- All designed to foster transparency

Over the past year WTO Members have turned their attention to Domestic Regulation disciplines in a major way

➤ WHY? External influences -

Advances made in the Trade in Services Agreement (TiSA) negotiations on Domestic Regulation and Transparency by end 2016 were carried over into proposals in the WTO Working Party on Domestic Regulation (WPDR) in 2017

An Aside on the TiSA: Participants



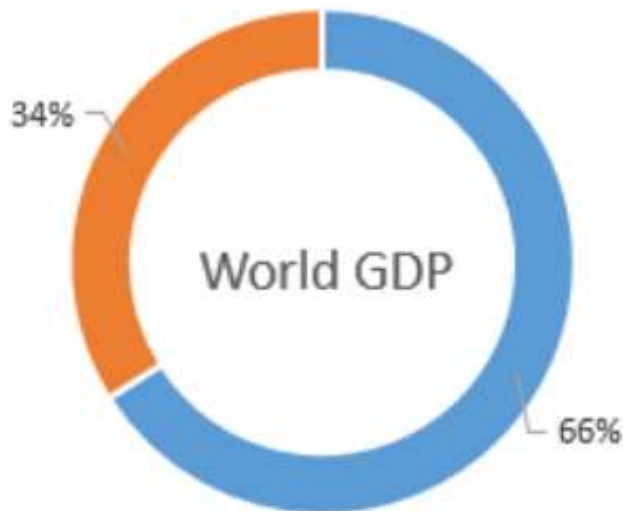
TiSA PARTICIPANTS:

Australia, Canada, Chile, Chinese Taipei (Taiwan), Colombia, Costa Rica, European Union, Hong Kong, Iceland, Israel, Japan, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Republic of Korea, Switzerland, Turkey, and the United States,

23 Participants, including the EU 28-or
50 in total

China requested participation in the TiSA in September 2013, but was not accepted.

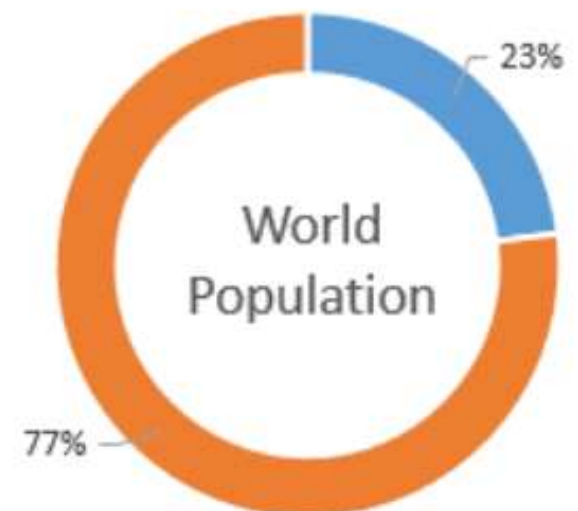
TiSA Participants in the Global Economy



■ TiSA ■ RoW



■ TiSA ■ RoW



■ TiSA ■ RoW

BRICS



BRICs account for 13% of global services exports. With their participation, TiSA would cover 85% of global services trade.

For more information on the TiSA Negotiations...

Megaregionals

<http://www.bilaterals.org/?-mega-regional-ftas-&lang=en#pagination> articles no keyword

TiSA draft text (as of end 2016)

<https://wikileaks.org/tisa/>

Implications of the Trade in Services Agreement (TiSA) for Developing Countries – study by German Development Institute

https://www.die-gdi.de/uploads/media/DP_10.2016.pdf

Elements from the TiSA Agreement that are found in the Consolidated Text Proposal to the WPDR

1. Administration of Measures

Time frames; electronic applications; processing of applications; fees; examinations

2. Independence of regulatory authority

3. Transparency

Publication; availability of information; enquiry points; opportunity to comment before entry into force

4. Technical standards

5. **Development of Measures: based on objective and transparent criteria, procedures to be reasonable and impartial, etc. ['necessity test']**

Notable: Many of the countries proposing the draft Consolidated Text on DR (end July 2017) have also found inspiration in the DR disciplines in their own recent FTAs

EXAMPLES:

- **New Zealand – Taiwan FTA and New Zealand – Hong Kong China FTA: Chapters on Domestic Regulation; Chapters on Transparency**
- **EU-Canada CETA: Chapter 12 on Domestic Regulation; Chapter 27 on Transparency**

AN ADDITIONAL INPUT on Domestic Regulation: INDIA'S DRAFT SERVICES FACILITATION AGREEMENT (February and July 2017 texts)

- An alternative proposal to the WTO by India contains many elements of domestic regulation disciplines
- Why notable? First time one of the BRICs has submitted a major proposal on services
- Many elements of India's proposal overlap with both the TiSA draft texts on DR and Transparency, and with the Consolidated Text on DR presented by several WTO Members at end July 2017

Elements common to both the Indian proposal on Services Facilitation and the Consolidated text

➤ TRANSPARENCY

- 1) Publication
- 2) Enquiry points
- 3) Advance comment possibility

➤ ADMINISTRATION OF MEASURES

- 1) Single window for application; Electronic applications
- 2) Application timeframes; Application processes
- 3) Fees; Examinations

Indian proposal on Services Facilitation also contains some innovative aspects of Domestic Regulation not elsewhere

- INFORMATION & VERIFICATION REQUESTS
- FAST TRACK PROCEDURES FOR APPLICATIONS
- APPEALS AND REVIEW PROCESS
- TAKING ACCOUNT OF EXPERIENCE AND MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS IN THE QUALIFICATION PROCEDURES TO RECEIVE EQUIVALENCY ACCREDITATION FOR PROFESSIONALS
- COOPERATION AMONG COMPETENT AUTHORITIES
- DEVELOPMENT PROVISIONS

But there are some elements in the Indian proposal on Services Facilitation that go beyond DR

Text also proposes liberalization of various modes of service supply

- ◆ **Mode 1 : cross border data flows**
- ◆ **Mode 2 : portability of health insurance**
- ◆ **Mode 4 : facilitating movement of natural persons**

Thus the Indian text is more encompassing & broader than DR disciplines as it also proposes to bind several aspects of services liberalization

And there are some elements of the Draft Consolidated proposal that are not contained in India's proposal

- MEASURES TO BE BASED ON OBJECTIVE AND IMPARTIAL CRITERIA
- PROCEDURES TO BE REASONABLE
- PROCEDURES TO BE IMPARTIAL AND ADEQUATE TO DEMONSTRATE COMPLIANCE WITH REQUIREMENTS
- COMPETENT AUTHORITY TO BE INDEPENDENT AND ADMINISTER DECISIONS IN AN INDEPENDENT MANNER

NOTE: The above are drawn from various FTA provisions.

SNAPSHOT OF OVERLAP BETWEEN INDIAN PROPOSAL AND DR MANDATE

Elements of the Indian proposal

Elements proposed by India that fall outside DR mandate

- Administration of Economic Needs Tests [Art 5]
- Facilitating cross-border flow of information [Art 7]
- Facilitating consumption abroad [Art 8]
- Facilitating Movement of natural Persons [Art 9]
 - Grant of temporary entry: Explanatory material/visa categories/representation of employer
 - Multiple entry visa
 - Social security contributions: exemptions or refund

Elements fitting under the Domestic Regulation mandate

Elements proposed by both India and domestic regulation proponents*

- **Transparency [Art 2]**
 - Publication
 - Enquiry points
 - Advance publication and prior comment
- **Administration of measures [Art 3]**
 - Single window for application
 - Electronic applications
 - Application timeframes
 - Application processes
 - Fees [Art 4]
 - Examinations [Art 6]

Elements proposed by India but not by other DR proponents*

- **Appeals and review [Art 3.5]**
- **Information and verification requests [Art 3.6]**
- **Fast track procedure [Art 3.7]**
- **Qualification procedures [Art 6]**
 - Account of experience and membership in professional associations
 - Information on how to meet deficiencies in qualification
 - Facilitate recognition
- **Cooperation among competent authorities [Art 10]**
- **Development provisions [Section II]**

Current scope of WPDR discussion



Elements proposed by DR friends but not by India

- Measures to be based on objective and impartial criteria
- Procedures to be reasonable
- Procedures to be impartial and adequate to demonstrate compliance with requirements
- Competent authority to reach and administer decisions in an independent manner.
- [Measures not more burdensome than necessary to ensure quality of the service]

* The scope of the Indian proposal extends beyond licensing and qualification requirements, and technical standards, and applies to all measures affecting trade in services.

Main Takeaways

Transmission is taking place between advances in the plurilateral TiSA negotiations and in the FTAs, which are being fed into the WTO as sources of inspiration

Domestic Regulation continues to be a sensitive area, but progress is finally being made

Current level of ambition is for a multilateral agreement at the MC11; remains to be seen if this can be accomplished without removing the heart of the Art VI.4 DR disciplines proposed

E-COMMERCE, not really a new item at WTO

- WTO Programme on Electronic Commerce 1998 → to examine all trade-related issues in the context of e-commerce, considering the economic, financial, and development needs of developing countries
- WTO bodies dealing with the Programme:
 - Council for Trade in Services (CTS)
 - Council for Trade in Goods (CTG)
 - TRIPS Council
 - Committee on Trade and Development (CTD)

E-commerce definition

“Exclusively for the purposes of the work programme, and without prejudice to its outcome, the term ‘electronic commerce’ is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means. The work programme will also include consideration of issues relating to the development of the infrastructure for electronic commerce.”

Source: Work Programme on Electronic Commerce, 25 September 1998, WT/L/274

Focus → Production and commercialization
through electronic means

A revival of interest in –e-commerce since 2016

WTO communications on e-commerce are very diverse in the topics and ways in which those are presented

Can categorize communications as follows : those that focus on

- **Framework – how to organize discussions?**
- **Specific elements – what topics to discuss?**
- **Process – how to move forward?**
- It is important to highlight that many communications include a developmental angle, which aligns with the emergence of the **Friends of E-commerce for Development (FED) Group in 2016**, which China joined earlier this month

E-commerce : Submissions proposing a framework for discussion

For example: EU and co-sponsors communication (July 2016)

- It maps out the e-commerce issues that could be discussed at the WTO, organizing them under:
 - **Regulatory Frameworks**
 - **Open Markets**
 - **Initiatives facilitating the development of e-commerce**
 - **Enhanced transparency of the MTS**

This categorization could be useful in case a negotiating mandate is not added into the Work Programme 1998, then work in other areas beyond liberalization could be pursued

Regulatory Frameworks

- **Enhanced transparency**
- **Consumer confidence enhancing measures**
 - Regulatory framework for consumer protection
 - Regulatory framework for privacy protection
 - Regulatory framework for cyber security
 - Regulation of unsolicited communications
- **Trade facilitating measures**
 - Open networks / access to and use of the internet
 - Addressing licensing and authorisation procedures
 - Addressing electronic payments
 - Access to and use of communications networks
 - WTO Telecommunication Reference Paper
 - Trade aspects of intellectual property rights
 - Recognition of e-signatures / authentication
 - Addressing e-procurement/ e-auctions

Open Markets

- **Liberalisation commitments**
 - Services
 - Commitments in e-commerce-relevant sectors e.g. (Telecom; computer; Mode 1 delivery; business services; professional services, etc.)
 - Classification, e.g. adhering to the Understanding on Computer and Related Services
 - Goods
 - Tariff elimination, e.g. ITA
 - Prohibition against custom duties on electronic transmissions
- **Measures ensuring openness**
 - Disciplines ensuring cross-border data flows
 - Disciplines with respect to localisation (local presence – including of computer servers, local content)
 - Addressing the transfer of and/or access to source code

Initiatives facilitating the development of e-commerce

- Trade Facilitation Agreement / further custom facilitations measures / paperless trading
- Aid for Trade / Technical assistance
- Regulatory cooperation among Members and their regulatory authorities

Enhanced transparency of the multilateral trading system

- Greater focus on e-commerce at the occasion of Trade Policy Reviews
- DG Monitoring Report on protectionism could include a digital focus
- Exchange of information through e-commerce agenda items of the regular WTO Committees

Communications addressing specific elements

- Other communications are much more specific and discuss elements that fall within the extensive mapping of e-commerce issues we have just seen

Eg. communication by Argentina, Brazil and Paraguay (December 2016)

It shares **MERCOSUR Resolution GMC 37/06 on e-signature**, covering:

- legal effects of e-documents and e-signatures;
- mutual recognition (not yet in place, to be negotiated);
- qualified digital certificates or advance e-signature (issued by an accredited service provider);
- liability limitations of the certification service provider;
- protection of personal data

We see again a regional approach in a multilateral context



“In order to provide further input to the discussions, Argentina, Brazil and Paraguay would like to share with Members GMC Resolution 37/06, which deals with this issue within MERCOSUR. The co-sponsors are convinced that e-signature is a fundamental issue in any future consideration regarding electronic commerce in the WTO.”

Communications on process

For example:

- **Communication from Singapore and co-sponsors (July 2017)** proposes next steps to MC11. It suggests Members embark on a discussion on how the Work Programme could better facilitate more focused and holistic discussion on e-commerce, as conversations are now fragmented across the four subsidiary bodies. They propose to identify improvements to processes and issues of interest that Members would like to take forward, with the outcome of discussions being captured in MC11 Ministerial Decision on E-commerce to set a clear updated framework and process through which future work could be undertaken.
- **Communication from the Russian Federation (July 2017)** recognizes the cross-cutting nature of e-commerce and, thus, proposes to move forward by creating a Working Group on Electronic Commerce under the auspices of the General Council as a pragmatic deliverable of MC11. They outline tasks that this Working Group could undertake and suggest that the Group would report on progress by MC12 and further decisions on future negotiations should be based on their recommendations.
- **Japan's communication (July 2017)** suggests that, based on the Work Programme, Members comprehensively evaluate whether the clarification or strengthening of the existing WTO rules are necessary over the course of next year after MC11. Members may then decide to initiate negotiations without delay depending on the result of the evaluation.

E-commerce communications reveal interest in services:

- Services at the centre  Digital Trade
- Services as enablers  E-commerce of trade in goods

Services at the centre

- Some communications focus on services as interest seems to be in digital trade *per se*.
- These include language on:
 - enabling cross-border data flows,
 - barring forced technology transfer,
 - protecting source code,
 - securing non-discrimination principles applying to digital products,
 - prohibition of digital customs duties (specific reference to digital products)
- Eg. communication from US and from Japan, among others

Services as enablers

Eg. communication from China and Pakistan (November 2016):

- “proposes (...) to focus on **promotion and facilitation of cross-border trade in goods enabled by Internet**, together with **services directly supporting** such trade in goods, such as **payment and logistics services**”.
 - Consider to allow **establishment of bonded warehouses** in other Members’ territories for distribution purposes
 - Exchange information on regulatory measures and procedures for **supplying services directly supporting cross-border e-commerce transactions**, including electronic and online payment, logistics and courier, online customs clearance and other trade facilitation services, and discuss the **possibility of making them more accommodating**
 - Bolster **cooperation** among providers of services supporting cross-border e-commerce transactions, **such as logistics and courier services, and payment services**

Main focus on B2C → “apply simplified border measures for import, export and transit of goods traded **at least** under B2C mode”

Migration from RTAs to WTO setting?

Many RTAs already include provisions on e-commerce –

Examples:

- Japan-Switzerland EPA, Japan-Australia EPA, Japan-Mongolia EPA,
- KORUS, US-Singapore, US-Chile, US-Australia
- Singapore-Australia, Thailand-NZ CEPA, India-Singapore CECA, ASEAN-Australia-NZ, EU-Korea FTA, Malaysia-Australia FTA, China-Australia FTA, EU-Canada CETA

- TPP – the most advanced e-commerce chapter
- Also some agreements in Latin America address e-commerce – Eg. Chile-Uruguay, Pacific Alliance, Central America-EFTA, among others.

Main Takeaways



- Is a multilateral outcome on e-commerce possible at MC11? Unclear at present.
- Potential beneficiaries? Large companies or SMEs?
 - An **ITC e-commerce MSME survey** shows that 82% of enterprises that engage in cross-border e-commerce (not offline trade) are micro and small in size → e-commerce paves out access to the international market for MSMEs
- What if a plurilateral track on e-commerce opens up in MC11?
- Would e-commerce have to be dealt with in a smaller group in order to make progress that could eventually be brought back into the WTO, such as on domestic regulation?

An ITC MSME e-commerce survey report will be launched next week during the WTO Public Forum

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Thank You

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