

**REMARKS FOR FMG BRAINSTORMING SESSION
ON HOW TO REVITALIZE SERVICES IN THE WTO
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Thank you. I am very pleased to be here and to take up this very important but neglected topic on the trade agenda.

– What can the WTO do about services trade? In my mind this question should be framed in an even bigger picture. Why did the last WTO Ministerial Conference not address services trade substantially in its preparatory discussions? And why have no negotiations on services been carried out at the WTO for the past 15 years?

This lack of attention seems incomprehensible when we consider the importance of services in the world economy:

- Services account for 65% of global gross domestic product (GDP) on average; (over 75% in most OECD countries)
- Over half of employment in the world is in services;
- 2/3 of all new FDI flows go to services; AND
- Over half of world trade when measured on a VA basis is constituted by services.

Additionally, as we are now in the digital age, it is digital services trade that is the most dynamic, fastest growing area of world trade. Trade in digitally delivered services is 54% of total global services trade and has been growing at over 8% annually for the past two decades. It is cited as the main avenue which offers developing countries the opportunity to increase their share of trade, break into global value chains, and climb up the skills ladder, without huge capital expenditure.

Yet despite this overwhelming and growing importance of services, we have witnessed the following in the past 15 years:

- No new multilateral (i.e. WTO-wide) negotiations have been initiated on services at the WTO since 2009.
- No attempt has been made to re-ignite the sectoral or cluster negotiations of a group of related services sectors.
- There has been a failure to incorporate services into the Environmental Goods negotiations.

--There has been little to no discussion of issues related to digital trade in the WTO Services Council or any attempt to negotiate an update within the WTO to existing rules to take into account the digital reality. Though GATS rules clearly apply to cross-border services trade carried out in digital form (principle of technological neutrality) as guided by the basic disciplines of MFN, non-discrimination and national treatment, there are several aspects specific to digital trade that are not covered in the GATS rules.

At MC13 services were MISSING from substantive discussions.

Some may disagree with this characterization and say that there were two big gains in the services area. But it is useful to examine more closely what actually happened.

The two major outcomes from MC13 cited in the area of services are:

First) Certification of some of the revised Schedules of Services Commitments was announced so that the plurilateral outcome on *Services Domestic Regulation* could be incorporated into these Schedules and become effective.

This is a major achievement indeed for the world trading system, given that it is estimated by the OECD that implementation of this agreement will result in the estimated reduction in global costs to services trade of over \$125 billion. This outcome, however, is the result of a plurilateral effort which initiated outside the WTO Services Council. And which was actually agreed and finalized in November 2021, long before MC13, but had been stalled by objections from India and South Africa for over two years. These countries lifted their objections for some of the schedules in time for an announcement at MC13 which was hailed as a Ministerial outcome, but in reality had nothing to do with the Ministerial meeting. In fact, the content of the certified schedules was not discussed and remained unchanged. At present services schedules of 54 WTO members who have signed onto the plurilateral disciplines on SDR have been certified, leaving 16 members' schedules still being challenged.

I want to emphasize the importance and significance for the WTO of this tremendous achievement in the services area since these disciplines on services domestic regulation will represent a major boost to services trade and will be applied on a multilateral basis. But this achievement had nothing to do with MC13 and should have been implemented much sooner.

Second) Extension of the E-commerce Moratorium for two more years.

The decision to keep digitally enabled trade open without the application of customs duties on electronic transmissions was also hailed as a major achievement at the recent Ministerial Conference. It indeed proved challenging to reach agreement for its extension. But the E-commerce Moratorium was first agreed by WTO Members long ago in 1998 as part of the WTO's work on E-commerce and has simply been extended ever since. This was therefore not a new outcome of MC13 but rather the extension of an ongoing outcome, now scheduled to terminate in two years at end March 2026 or at the next Ministerial Conference.

So was there anything new for services at the WTO MC13?

There was a paragraph in the Ministerial Declaration on services with encouraging but rather weak language. It reads.....

WE (the Ministers of Trade).....commit to reinvigorate work on trade in services within the mandate of the GATS, and other existing mandates, including through further thematic, evidence-based discussions.

Although it is good that services were included in the Ministerial Declaration, this paragraph omits something very important. It does NOT mandate any renewed negotiations on trade in services within the WTO. It simply commits to more work and more discussions.

It is instructive to look at what has been happening in parallel to the WTO stalemate on services these past 15 years. The world has not stood still during this period.

1) There has been the conclusion of some major RTAs that contain WTO plus disciplines in several key areas affecting services, including regulatory coherence, digital trade or e-commerce, and SMEs. We can think of the USMCA, the EU trade agreement with Canada; and the CPTPP among others.

2_ We have witnessed a proliferation of standalone Digital Economy Agreements outside the WTO. These DEAs are not incorporated into RTAs but are self-contained or stand by themselves. Many have binding provisions; others contain cooperative or best effort clauses. One example among 10 or 11 of these agreements is the Digital Economy Partnership Agreement (DEPA).

3) A plurilateral negotiating initiative on E-Commerce was launched in January 2019. More than 90 WTO members have been participating in these JSI negotiations led by Australia, Japan and Singapore.

As a result of this, the level of ambition of the E-commerce JSI was lowered considerably after the U.S. changed its posture towards disciplines on digital trade late in 2023 and reversed course with respect to free flow of data; forced localization of servers; and source code. Nonetheless these negotiations cover a significant number of new issues and contain disciplines that – if implemented - will govern many aspects of digital trade. A round of negotiations scheduled for this month should be the last technical discussion of a draft that is expected to be finalized this summer. If and when adopted, these new disciplines should go a long way towards filling the current gap in rules for digital trade / e-commerce. But how this plurilateral agreement will be attached or incorporated into the WTO and how it will be applied remain important outstanding issues.

4). There has been progress in other fora on regulatory cooperation for services. Given the importance of regulations in shaping services trade and efficiency, this is a vitally important area and one which the WTO has spent little time addressing. The APEC grouping has been examining good regulatory practices for a while and agreed last year on a Blueprint for Good Regulatory Practice in APEC that covers both goods and services, which the APEC economies will now try to implement. This effort is discussed in the Policy Brief that was provided to you as background for this session.

So, although the outcome at MC13 has been depicted as fairly rosy for services, when one looks deeper, it was actually a function of timing on one hand for the announcement of a previously finalized plurilateral agreement and continuity of a previous decision on the other. **NO NEW initiative on services within the WTO was discussed prior, during, or as a result of MC13.**

Yet services continue to increase in economic importance. The WTO should be at the center of efforts to open services markets, expand services commitments, increase transparency around services measures, and improve good regulatory practice for services. But it is not carrying out this role. So where do we go from here to turn this situation around?

Five recommendations for revitalizing services work at the WTO:

- ***Bind existing services commitments at the level of regulatory practice and expand the coverage of services commitments in the GATS***

Given that it is now a well observed and understood fact that most trade agreements do not result in the liberalization of services trade but rather in the binding of existing services regulations, the main objectives of the WTO in revitalizing its services work should be to provide needed transparency, predictability, and stability to multilateral services trade. This could be achieved through two main avenues:

- i) Binding the level of openness or regulatory practice to lock in the status quo, and
- ii) Expanding the coverage of services commitments to a greater number of sectors.

WTO Members could rekindle services work through agreeing to bind the existing level of practice in services. Many services schedules have not been touched since 1995 when the WTO came into existence. However, a great deal of services reform has been carried out unilaterally. But this greater openness has not bound. These advances could fairly easily be codified through an agreement by WTO Members to bind existing commitments at the level of regulatory openness in order to lock in the status quo.

To achieve greater coverage of services commitments in their schedules, WTO Members could agree to include a specific percentage of the 150 or so sub-sectors in the W/120 Rev.2 list as part of a more expansive coverage of binding commitments. This percentage would differ for developed and developing members. For example, one possibility would be a binding of 90% of total sub-sectors in the W/120 Rev. 2 by developed and 75% by developing members, with a lower percentage by LDCs. This should be combined with an additional requirement Making this more meaningful would be a requirement to bind at least 70% of sub-sectors in each of the 12 major services sectors.

- ***Focus on regulatory coherence through examining and agreeing upon what constitutes good regulatory practice for services***

Given the importance of regulations in the services area, WTO Members could begin ‘soft law’ discussions on regulatory coherence and how to achieve this. Such discussions necessarily require more attention to regulatory coordination. And they likewise require an understanding of what constitutes good regulatory practice for services and how to achieve this. Good regulatory practice goes beyond the recent plurilateral disciplines on services domestic regulation, though these are an essential part of the process. It encompasses the entire life cycle of a regulation, from inception to drafting, implementation, and review. The WTO might take inspiration from what APEC has done in agreeing upon what constitutes good regulatory practice for goods and services. This would benefit developing economies in particular as they streamline their regulatory practices to achieve more efficient services outcomes that would reverberate throughout the entire economy.

- ***Involve services regulators in sectoral discussions and possible resulting plurilateral initiatives***

Most services regulations are sector specific and require specialized knowledge of the sector that is held by services regulators. To advance in both the objective of greater regulatory coherence as well as greater openness in services, a sectoral approach could be the most useful avenue to achieve better outcomes. This should involve the participation of services regulators. Focusing on a sectoral – or even cluster – approach would also have the advantage of awakening the interest of the private sector. Such sectoral efforts could be undertaken as plurilateral initiatives that could lead to negotiations.

WTO Members could also encourage revival of the “cluster” approach to services negotiations, discussing a grouping of service sectors together. This is what APEC did with logistics-related services during the recent Covid pandemic, and it led to a much better understanding of how groups of services work together in the logistics area. As part of this work, APEC agreed on a definition of 10 logistics-related services and adopted a set of *Non-binding Guidelines* for treatment of these services during periods of health crisis so that supply chain operations would not be adversely affected. The WTO could take this effort one step further to develop binding obligations for agreed regulatory measures affecting a cluster of services with the goal of improving their efficiency and operation in world trade.

- ***Begin discussions of the relevance of GATS disciplines to digital trade***

Given the importance and dynamic growth of digital services trade, it is important that the WTO not ignore this area. Fact-finding discussions examining GATS disciplines and

digital services trade would be of an exploratory, evidence-based nature, based on WTO Secretariat background papers or those of other experts in the digital trade area. They would have the purpose of informing WTO Members about the relevance of existing GATS rules (as also contained in the Telecom Reference Paper) to the specificities of digital services trade. This discussion would complement the efforts and/or future outcome of the JSI plurilateral negotiations on E-commerce. Such discussions should also explore the feasibility of application of customs duties to electronic transmissions, as specified in the E-Commerce Moratorium, as well as the types of other measures that can be used in the digital realm to discriminate against foreign service suppliers (i.e. digital taxation that is not applied according to national treatment, and other). These evidence-based discussions should lead to a better understanding of digital services trade and how existing GATS multilateral rules and the (future) JSI outcome on E-Commerce address needs of digital service providers.

- ***Avoid linkages of services negotiations with other areas of international trade***

WTO Members should avoid any future linkage of services negotiations to the negotiated outcome of any other area of international trade (i.e. manufacturing tariffs, agriculture, fisheries, etc.) The services universe is wide enough to encompass trade-offs between many services sectors without the necessity to trade these off against other areas of the economy. This linkage has held back progress on services negotiations for the past 20 years. Should sectoral initiatives be undertaken in the services area, these should also remain clear of any type of linkages.