

## **Think piece on the future of services trade at the WTO**

### **Overview**

International trade is being transformed by the rise in tradable services, how they are being embedded in production processes, and the digital economy. Together they are driving where the value of trade occurs – underlining the importance of the WTO’s work on services trade.

The recent World Bank and WTO Report on [Trade in Services for Development](#) reinforces the power of services trade in the opportunity to promote inclusive growth, supporting MSMEs and women’s economic empowerment.

As the current set of initiatives in the WTO relating to services trade (hopefully) come to a close in the near future. This think piece sets out a longer-term vision for ensuring that services trade remains at the core of what the WTO can deliver whether as part of wider “WTO Reform” discussions or individually. This paper does not cover the broader services trade agenda outside of the WTO.

### **Historical lack of focus on services trade in WTO negotiations**

At the Twelfth Ministerial Conference, Ministers recognized that “Services trade is vital to the global economy and has a major role to play in global economic output and employment.”<sup>1</sup> Yet, the notable commonality between recent concluded and implemented negotiations at the WTO since 2010 is that they don’t directly cover issues related to services trade. This includes:

- A multilateral Trade Facilitation Agreement in 2013 which saw WTO Members agree to cut red-tape at the border and streamline customs procedures.
- Revised plurilateral Government Procurement Agreement in 2011 which expanded the scope of government procurement open to the companies of GPA Parties.
- An expansion of the plurilateral Information Technology Agreement which added 201 new tariff lines to the Agreement due for tariff elimination.
- An agreement to eliminate certain forms of harmful fisheries subsidies in 2022.
- Elimination of Export Subsidies in agricultural products in 2015.

### **Paucity in services trade notifications and transparency**

This extends to the monitoring function of the WTO. Under the General Agreement on Trade in Services (GATS), WTO Members have an on-going obligation to inform the WTO of any new, or changes to existing, laws, regulations or administrative guidelines which could significantly impact trade in services. Yet when it comes to notifying these, many WTO Members do not.

There have only been approximately 1140 notifications, which averages only 40 GATS notifications each year since the GATS was agreed in 1995. This simply does not reflect the experience of the services sector which has experienced considerable legal and regulatory changes over the past 28 years around the world. It also pales in comparison when compared with notifications made under the WTO Agreement on Technical Barriers to Trade which saw 3,800 notifications made in 2022 alone.

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<sup>1</sup> WT/MIN(22)/24

## WTO E-Commerce Work Programme and Moratorium

The Work Programme on Electronic Commerce was adopted in September 1998, tasking four WTO bodies with exploring the relationship between existing WTO agreements and e-commerce.

While the past two years has seen an up-tick in the activities under the work programme including many “dedicated discussions” as it was “reinvigorated” following MC12, the main focus from industry under the work programme is the continued extension of the Moratorium on Customs Duties for Electronic Transmissions. The Moratorium is set to expire at MC13 in February 2024 if it is not renewed, with opposition hardening against its extension particularly from India, South Africa and Indonesia.

## Plurilateral negotiations

At the WTO Ministerial Conference (MC11) in Buenos Aires in 2017, a number of WTO Members got together and launched plans to move forward with discussions in the WTO in four areas e-commerce, domestic regulation for services, investment facilitation and MSMEs.

- **Domestic Regulation for Services:** 67 WTO members have concluded an agreement on Services Domestic Regulation which sets new rules for licensing and qualifications. Yet due to ongoing challenges from two WTO Members, the agreement cannot enter into effect until the GATS schedules have been updated to include the new commitments. The agreement can be found [here](#).
- **Investment Facilitation for Development:** 116 WTO members are participating in the Investment Facilitation for Development negotiations. While substantively, the text of the new agreement has been concluded, like domestic regulation, faces a similar challenge to integrate it into the existing WTO architecture. Those participating in talks on investment facilitation have chosen to pursue an Annex IV agreement which requires the full consensus of every WTO member whether participating in the agreement or not. The agreement can be found [here](#).
- **E-commerce:** 90 WTO members have been working towards concluding an agreement on trade-related aspects of electronic commerce, with participation open to all WTO members. While the co-Convenors of the talks (Australia, Japan and Singapore) are aiming for substantive conclusion of the talks by the end of 2023, this has been thrown into question by recent US announcements withdrawing support for advanced provisions on data flows, source code and data localisation. The Joint Statement on Electronic Commerce is available [here](#).
- **MSMEs:** The Working Group on MSMEs have taken a different approach choosing to focus on declarations and recommendations to improve the trading prospects of MSMEs and create dedicated online resources. The group includes 98 WTO members and more information can be found [here](#).

To date, India and South Africa have [challenged](#) the validity of such plurilateral initiatives and of undermining the multilateral trading system. Given that WTO Members have historically pursued plurilateral initiatives under the GATS, this position should be robustly challenged. Industry’s view is that without progress on services-related issues, would do much more to undermine the validity of the WTO and multilateral trading system.

## Charting a way forward

Putting forward a comprehensive agenda to pursue meaningful services trade outcomes at the WTO whether multilaterally or plurilaterally will not be an easy task. However, given its importance both to world trade and developing economies – it is worth the effort. Possible avenues which could be pursued by WTO Members include:

1. **Improve services trade monitoring and notifications:** Increase the number of notifications made under the GATS and other relevant agreements, encouraging like-minded WTO members to participate. Where possible, the WTO Secretariat should be encouraged to support developing countries with their notification preparations. These should be integrated into the WTO's notification database and where possible disaggregated on their impact on different services sectors. This would support previous proposals made by the certain Members to improve the functioning of the WTO's Council for Trade in Services. Members should also consider how best to ensure the greater participation of the private sector across different WTO negotiations.
2. **Pursue a more activist approach to integrating plurilateral agreements into the WTO:** Given the challenges to integrating two of the plurilateral joint initiatives into the legal architecture of the WTO, efforts should be made to pursue every avenue including arbitration in order to ensure that the commitments are rectified under its GATS schedule and the entry-into-force of the Agreement on Domestic Regulation for Services. Equal efforts should be made with regards to the Agreement on Investment Facilitation for Development.
3. **Continue to encourage additional participation across services-related plurilateral initiatives:** Like-minded countries should continue to encourage additional participants under the different plurilateral initiatives. All avenues should be utilised including through FTA structured discussions and other relevant bilateral fora including those dedicated to regulatory cooperation.
4. **Ensuring a robust and commercially meaningful e-commerce joint initiative agreement:** Participating Members should continue to pursue a robust and commercially meaningful e-commerce agreement which includes meaningful provisions on ensuring data flows across borders and disciplining discriminatory data localization policies. The agreement should be guided by principles of transparency and interoperability among legal frameworks. Future areas of expansion to be considered could include supportive services which enable and are related to the WTO Information Technology Agreement (ITA).
5. **A permanent e-commerce moratorium:** Continue to support a permanent e-commerce moratorium and build support for this outside the e-commerce joint initiative agreement.
6. **Undertake work to launch a "Trade Facilitation 2.0" negotiations:** The COVID-19 pandemic has highlighted the importance of logistics, transport, shipping and other related services to the functioning of the global economy. While the Trade Facilitation Agreement was focused on border processes for goods, the time is right to start pursuing a discussion to create a complementary agreement focused on the services related to trade facilitation and take into account new developments from services providers to utilise digitalised trade documents such as Bills of Lading as enabled by the UK Electronic Trade Documents Act.
7. **Environmental services:** Talks under the Trade and Environmental Sustainability Structured Discussions (TESSD) has a dedicated track to discuss environmental services in the Working

Group on Environmental Goods and Services. However, after three years there is a risk that it becomes a talking-shop rather than working towards a substantive outcome. Members should focus on identifying a list of activities and types of barriers to environmental services with the aim to develop a reference paper which could be used as the basis for negotiation. This should build on previous work undertaken by APEC and parties to the ACCTS.

8. **Ensure GATS commitments reflect current applied services regime:** Members should consider updating their GATS commitments by eliminating water between bound and applied regimes by ensuring existing policies are bound at the level of current regulatory practice by unilaterally amending their respective GATS schedules of commitments accordingly.
9. **GATS Article XIX and resuming market access negotiations:** The GATS was never envisioned to be a static agreement. Rather GATS Article XIX sets out “Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization.” Members should look to initiate a process with other like-minded WTO members to restart services market access negotiations through a process of request/offer. The base-line for this could be those members’ current FTA practice as the starting point.
10. **Revisit the sectoral approach:** Members should revisit the sectoral approach which led to the creation of the additional commitments for telecommunication services, financial services and Mode-4 as a means of improving the WTO’s deliberative function. Members could initially draw on the recent experience of MSME initiative as well as APEC which has agreed several recommendations and guidelines for specific services sectors. Other starting point would be the existing work<sup>2</sup> on Professional Services and accountancy.
11. **Leveraging the LDC Services Waiver:** While some WTO Members have made commitments under the LDC Services Waiver, there is an opportunity to improve the operationalisation of existing commitments under the waiver and focus further expanding services trade with developing countries in line with broader development objectives.

This non-paper is intended to stimulate a greater discussion on how WTO Members and interested stakeholders can support a forward-looking agenda for services trade at the WTO.

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<sup>2</sup> <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/TN/S/36.pdf&Open=True>