

CHAPTER 10

Updating the General Agreement on Trade in Services¹

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Since the establishment of the World Trade Organization (WTO) in 1995, members have done little to adapt and expand the rules of the game for policies that affect trade in services. Structural transformation trends that are increasing the role of services in economic activity have not been accompanied by revision of WTO rules and coverage, reducing the salience of the organisation. Ongoing talks among groups of WTO members on e-commerce and domestic regulation of services will help to fill the gap, but need to be complemented by action to update and expand the coverage of the General Agreement on Trade in Services (GATS). China and the European Union (EU), for different reasons, have a strong interest in expanding services trade, as do India and the United States (US), providing the basis for a China-EU led plurilateral initiative to resuscitate talks on trade in services in the WTO.

INTRODUCTION

Since 1995, services have become steadily more important in global economic activity, driven by a mix of increasing average real incomes in many countries and managerial and technological changes. Services are particularly important for the EU, accounting for some 66% of GDP for the EU27 as a whole. This is very similar to the services share of GDP in China, at 65%. The two trading powers differ, however, in terms of trade specialisation and openness to trade in services. For the EU27, trade in services (exports plus imports) is some 27.3% of EU27 GDP, the figure is much lower for China at 5.3% of GDP. This is associated with much larger nominal values of services trade – the EU27 in 2019 exported (imported) €1.055 billion (€942 billion) worth of services to (from) the rest of the world, running a trade surplus. China, in contrast, runs a substantial global trade deficit in services, with exports (imports) of €255 (€450) billion.² In part, the difference in absolute size of trade in services reflects differences in average levels of per capita income, while the services trade deficit reflects China's relative specialisation in merchandise.

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2 Data sourced from European Commission and World Bank, converted into Euros at average nominal exchange rate in 2019.

Negotiated more than 25 years ago, the GATS filled a major gap in the 1947 General Agreement on Tariffs and Trade (GATT), which applied only to trade in goods. Expanding the multilateral trading system of rules to encompass services was a major achievement of the Uruguay Round negotiations. Since then, WTO members have done little to adapt and expand the rules of the game for policies that affect trade in services. Efforts to expand the coverage of the GATS have been unsuccessful. Ongoing plurilateral talks launched in 2017 on e-commerce and domestic services regulation offer a prospect for updating of rules in key policy areas, but these do not encompass many market access-restricting policies across a wide range of services sectors. The stylised facts on the role of services in aggregate trade of the EU suggest services should be an important 'offensive' interest in commercial policy terms. From the mercantilist perspective that informs trade negotiations, the large services trade imbalance suggests this is more likely to be a 'defensive' interest for China. However, services imports can be expected to increase as the Chinese economy transitions away from being based on export-driven development towards a more domestic consumption driven growth model. Whatever the underlying political economy drivers of services trade policies, the premise underlying this chapter is that the continued relevance of the multilateral trading system hinges on the ability (willingness) of large WTO members to revisit and expand the coverage of the GATS.

THE STATE OF PLAY

As mentioned, GATS rules and commitments date back to the mid-1990s. New technologies, notably the internet and the associated shift towards a digital economy, have made the GATS increasingly outdated. Starting in 2000, talks commenced to expand the coverage of the agreement. These subsequently became part of the Doha Development Agenda (DDA), the multilateral trade round launched in 2001. The DDA services negotiations did not result in a successful outcome. In part, this was because services were initially put on the back burner in the DDA. The priority was given to agriculture and trade in manufactures, reflecting relative disinterest by many developing countries in services trade and the complexity of service liberalisation compared with trade in goods. Parallel talks on domestic regulation of services and on e-commerce – both initiated in the late 1990s – sought to address specific dimensions of the complex policy framework affecting trade in services. Consensus on a way forward in either area proved elusive. Aside from a waiver to permit WTO members to grant services trade preferences to the group of least developed countries (LDCs), adopted in 2011 and extended in 2015, WTO members have made no additional liberalisation commitments since the GATS came into force.

Instead, many WTO members focused efforts on negotiating preferential trade agreements (PTAs) that covered services trade.³ Many of these PTAs go beyond the GATS, not only in terms of coverage of market access commitments, but also in terms of approaches and rules (Adlung and Roy 2005). An example is the use of a negative list approach to determining sectoral coverage, under which commitments apply to all services unless explicitly excluded. GATS market access commitments use a positive list approach: they apply only to those sectors and activities that are scheduled. Once it became clear that DDA talks among the WTO membership had become deadlocked, the experience with PTA-based approaches motivated a small group of 23 WTO members⁴ to launch negotiations on a Trade in Services Agreement (TiSA) in 2013. Whether the outcome of these talks would be structured as a PTA under Article V of the GATS (which permits stand-alone Economic Integration Agreements among subsets of WTO members if these have substantial sectoral coverage) or instead would have been included in WTO members' GATS schedules and applied on a most favoured nation (MFN) basis was never determined. The TiSA talks ceased at the end of 2016 because the Trump administration did not support the initiative.

At the December 2017 WTO Ministerial Conference in Buenos Aires WTO members launched four 'joint statement initiatives' (JSIs) spanning e-commerce, domestic regulation of services, investment facilitation, and measures to enhance the ability of micro and small and medium enterprises (MSMEs) to utilise the trade opportunities.⁵ All four of these JSIs encompass elements affecting services trade. The e-commerce JSI talks involve 80+ WTO members, mostly middle- and high-income nations. The focus of deliberation is on a mix of trade restrictive policies and digital trade facilitation.⁶ The former include regulation of cross-border data flows and data localisation requirements, the latter include issues like electronic signatures, e-invoicing, facilitating electronic payment for cross-border transactions, and cooperation on consumer protection (e.g. combatting fraud). Services domestic regulation talks involve 60+ WTO members and center on matters associated with authorisation and certification of foreign services providers (licensing, qualification, and technical standards), not on substance of regulations. The aim is to reduce the trade-impeding effects of domestic regulation by:

- Enhancing transparency of policies through national enquiry points.
- Adopting good practice timeframes for processing of applications.
- Acceptance of electronic applications by service providers.

3 By the end of March 2021, there were 174 PTAs that include provisions on trade in services, of which two are services-only agreements. See <http://rtais.wto.org/UI/publicsummarytable.aspx> (last visited April 1, 2021).

4 Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, the EU, Hong Kong (China), Iceland, Israel, Japan, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, South Korea, Switzerland, Turkey, and the US.

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

6 For a summary of the issues tabled by different participants, see <https://etradeforall.org/wto-members-submit-proposals-aimed-at-advancing-exploratory-e-commerce-work/> and Ismail (2020).

- Ensuring national authorising bodies are independent, impartial and use objective criteria.
- Establishing mechanisms for foreign providers to request domestic review of decisions.

Both the e-commerce and domestic services regulation subjects have been discussed at the WTO since the late 1990s. A WTO work programme on e-commerce was initiated in 1998, and a Working Party on Domestic Regulation was established in 1999.⁷ These work programmes were anchored in existing WTO treaties. The mandate of the working party on domestic regulation of services was to develop horizontal (cross-sectoral) disciplines called for in Art. VI GATS. E-commerce touches on matters addressed by all three of the major WTO multilateral agreements – GATT, GATS, and TRIPS.⁸

The characteristics of services (intangibility and non-storability) often means provision requires a physical presence (mode 3), making investment facilitation highly relevant to services trade, whereas many MSMEs provide or sell services. The MSME and investment facilitation JSIs differ from e-commerce and services regulation in not being tied to existing WTO agreements. The aim of the MSME JSI, which includes some 90 WTO members,⁹ is to identify measures that governments can take to support the internationalisation of small firms. Any agreement will be applied on a voluntary basis.¹⁰ Talks on investment facilitation, launched by some 70 WTO members in Buenos Aires, have grown to encompass more than 100 participants.¹¹ The talks cover all sectors, goods, and services, and centre on ‘good regulatory practices’ such as transparency of investment-related policies, streamlining administrative procedures, and information sharing. The agenda excludes liberalisation of inward FDI policies, measures related to protection of foreign investors and investor-state dispute settlement. The focus on facilitation as opposed to liberalisation is very similar to – and builds on – the Doha Development Agenda agreement on trade facilitation.

Taken together, if successful, the JSIs will move participating WTO members in the direction of a proposal to facilitate trade in services put forward by India in 2016 to the WTO Working Party on Domestic Regulation (Government of India 2016a, 2016b). This aimed to discuss 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. India’s proposal presumed any agreement to facilitate trade in services

7 A precursor Working Party on Professional Services agreed in 1998 on a set of principles for regulation of licensing of accountants and accountancy services. These were adopted by the Council on Trade in Services in 1998 but did not enter into force because of linkage to a successful conclusion of the Doha round negotiations.

8 The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

9 https://www.wto.org/english/news_e/news20_e/msmes_05nov20_e.htm.

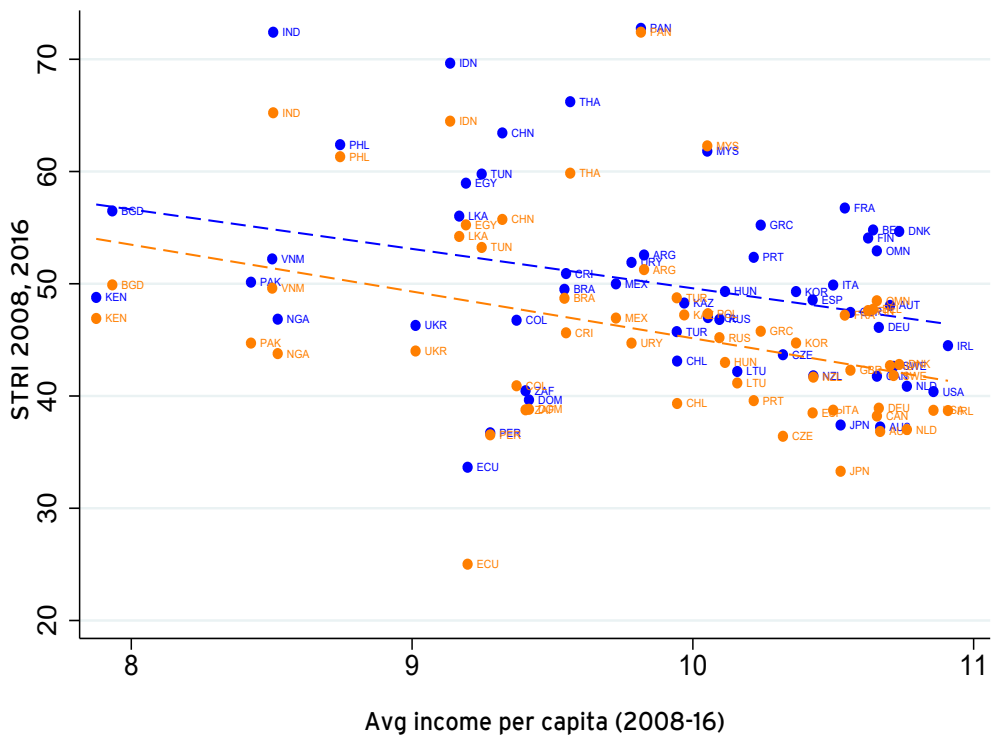
10 See Campos-Leal et al. (2020).

11 https://www.wto.org/english/news_e/news19_e/infac_05nov19_e.htm. See Baliño et al. (2020).

would be multilateral in the sense of applying to all WTO members, analogous to the Trade Facilitation Agreement (TFA). It would also emulate the TFA by not focusing on the substance of market access restricting policies.

Much, if not most, of what may emerge from the JSI talks will apply on an MFN basis because they do not encompass market access liberalisation (discriminatory policies). The e-commerce talks are the exception, in that policies constraining mode 1 trade are on the table (Section F of the leaked consolidated text in December 2020), but attention focuses mostly on data-related policies. Discriminatory trade measures more generally, including mode 3 and mode 4 restrictions, are not on the table in any of the JSIs. Taken together, if successful, the joint initiatives will facilitate trade and investment in services, but they will do little to open markets to greater competition by foreign services suppliers. Services trade restrictiveness indicators compiled by the World Bank and the WTO, and the OECD, illustrate that barriers to trade in services remain significant in many countries. There has been some reduction in the average level of trade restrictiveness since the late 2000s, but trade in services often remains more constrained by policy than trade in goods (Figure 1). Monitoring of trade policy dynamics since 2009 by the Global Trade Alert reveals very little in the way of measures to liberalise trade in services.¹²

FIGURE 1 STRI 2016 VS. STRI 2008

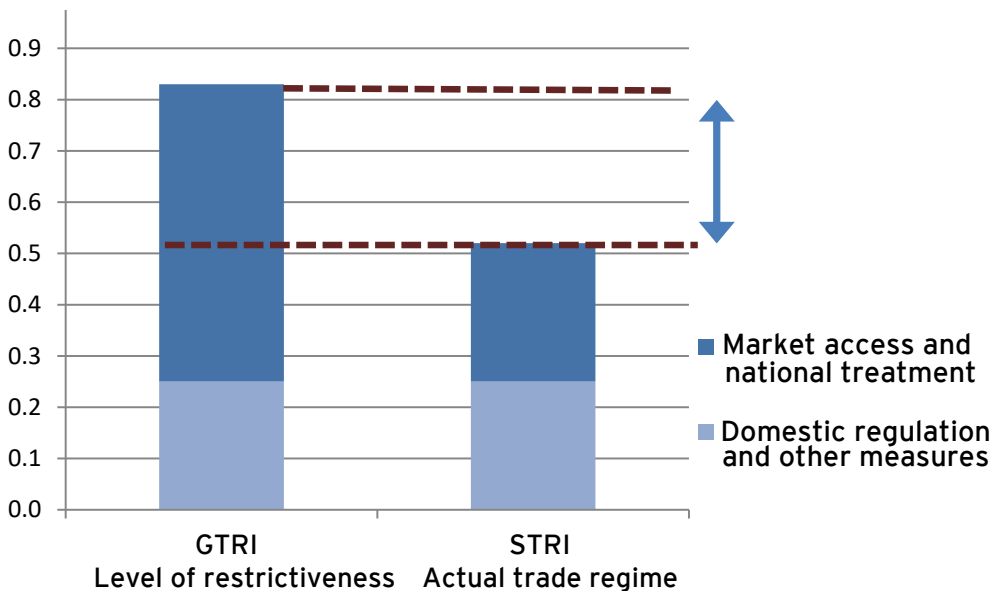


Source: Borchert et al. (2020).

¹² <https://www.globaltradealert.org/>.

Abstracting from lowering the level of barriers to trade in services implied by policies applied by countries, there is also much scope to reduce policy uncertainty for businesses engaged in international trade. The GATS is an instrument to lower such uncertainty through sector- and mode-specific commitments designed not to increase market access barriers above a specified level and/or to apply the national treatment principle to specified services activities. The main purpose of the GATS, as well as PTAs that cover services, is to bind services trade policies. PTAs often cover more services than the GATS, providing an opportunity to include the commitments made by PTA members in the GATS. That was one negotiating goal of TiSA talks, which largely centred on expanding the coverage of policy bindings as opposed to further liberalisation. Research has shown that even deep PTAs like the agreement on Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) entail limited liberalisation, instead acting more as a device to lock-in (bind) applied policies.¹³ This is of value, because reducing uncertainty increases investment by firms (Ciuriak et al. 2020). The difference in coverage of the GATS and applied services trade policies suggests a useful first step would be to expand the coverage of GATS by doing more to make commitments not to raise current levels of services market access restrictions (Figure 2).

FIGURE 2 DIFFERENCE BETWEEN GATS COMMITMENTS AND APPLIED POLICIES.



Source: Miroudot and Pertel (2015).

¹³ See e.g. Roy (2011), and Gootiiz and Mattoo (2017).

MOVING FORWARD: TWO POTENTIAL PATHS

There are two potential paths to update the coverage of the GATS. One is to expand participation in deep PTAs such as the CPTPP or for like-minded countries to negotiate a new PTA that brings together countries that have been concluding deeper PTAs. The other is for like-minded countries to launch negotiations on an open plurilateral agreement (OPA) on trade in services – i.e. to emulate the groups of WTO members using JSIs to engage on matters of common interest. The OPA path is in our view the more desirable one. Both potential paths entail engagement by and among a subset of the WTO membership, but a major difference is that the OPA route requires a critical mass of WTO members making commitments that would apply on an MFN basis, whereas the PTA track would result in a discriminatory arrangement.¹⁴

China has recently signed the Regional Comprehensive Economic Partnership (RCEP), which includes services, as does the recently concluded China-EU Comprehensive Agreement on Investment (CAI). China has also signalled potential interest in engaging with CPTPP members. If China, the EU, and the US were to join the CPTPP this would come close to critical mass, but would not be sufficient, given that the countries involved can be expected to be concerned by free riding by India – the main large services exporter not included in such a CPTPP+ grouping. Thus, the CPTPP+ route would continue to involve discrimination and take the form of a PTA.

In our view, a critical mass OPA under auspices of the WTO that applies on a non-discriminatory basis is more desirable from both an economic and systemic perspective than expansion of PTAs. Although we are fully cognisant of the challenge of negotiating a meaningful MFN-based agreement, the major trading powers all have an interest in improving market access conditions for services. Joint action to pursue services trade reform in the WTO would be consistent with the importance accorded to multilateralism and the strong support for the WTO by both the EU and China.¹⁵ The Article V GATS PTA route is always available as an outside option if critical mass (free rider) constraints bind. The investments made in determining the potential contours of an agreement will not be lost if the OPA route proves infeasible, insofar as a subset of the countries that can agree, could always create a PTA framework to harvest the results of discussions, excluding the countries that are not willing to join them.

14 See Hoekman and Mavroidis (2015) and Hoekman and Sabel (2021) for further discussion of plurilaterals in the WTO and the OPA concept. See Gallagher and Stoler (2009) and Winslett (2018) on critical mass.

15 The latter was demonstrated *inter alia* by the participation of China in the Multi-Party Interim Appeal Arrangement (MPIA), the contingency measure to respond to the Appellate Body crisis suggested by the EU.

A CHINA-EU SPONSORED JSI ON TRADE IN SERVICES IN THE WTO

Both the EU and China have revealed an interest in cooperating on services trade policies. The CAI contains a significant number of services commitments, providing a foundation for continued cooperation in this regard between China and the EU. As importantly, the CAI demonstrates the willingness on the part of China to engage on services trade issues and improve regulatory frameworks for services sectors, including enhanced transparency and disciplines on state-owned enterprises (European Union 2020). A China-EU drive to launch an initiative to expand on the GATS by negotiating an OPA on services could build on the mode 3 services market access liberalisation agreed between the EU and China in the CAI,¹⁶ as well as the successful conclusion of the RCEP negotiations. Although some WTO members, notably India and South Africa, oppose JSIs, arguing these are legally inconsistent with WTO rules (WTO 2021), the US, the EU, and others defended the legitimacy of these plurilateral negotiations during a General Council meeting in early March 2021, with the US holding that the JSIs are an important part of keeping the WTO relevant (Monicken 2021).

As the world's second largest economy, China represents a huge market with potential demand for services and associated liberalisation arising from the ongoing process of economic transition and structural change. The market potential offers China opportunities to pursue offensive interests and negotiate market access and non-discrimination treatment for Chinese services exported overseas. On the other hand, China's defensive interests mainly concern sensitive sectors such as online cultural products and those services concerning critical infrastructure, cybersecurity, or even wider national security. While the latter are important, they do not necessarily preclude that a compromise among the EU, China, and other WTO members is not possible. Geopolitical tensions and ideological and cultural differences among the US, the EU, and China¹⁷ do not mean there is no scope for joint gains from cooperation on trade. The e-commerce JSI discussion on digital trade matters, the CAI, and RCEP illustrate this. The prospects for success may seem dim given current tensions between China and the US, and past opposition by the US to accept China as a participant in the TiSA negotiations, but convergence on a range of issues suggests this is a path worth pursuing.

Cross-border data flows provide an example. The US has long been advocating the principle of data flow in trade agreements subject to very limited exceptions. The EU has a more conservative attitude towards data flows, reflecting a desire to protect privacy (Ferracane and Li 2021). In the JSI negotiation on e-commerce, the EU seeks to ban data localisation measures and while conditioning data flows on regulatory standards and protecting privacy as a fundamental right (WTO 2019). As is reflected in the CAI and the

16 Should the CAI not be ratified by the European Parliament, the OPA route offers an opportunity to go beyond a bilateral arrangement and integrate core elements of what was agreed into a plurilateral agreement that encompasses more countries.

17 See e.g. Huntington (1993), Wu (2020).

RCEP e-commerce chapter, China has shown a willingness to revisit what were considered redline issues such as data flows. The CAI allows data flow of financial information¹⁸ and RCEP includes data flow disciplines as well.¹⁹ Although the CAI does not address data flows in all sectors and RCEP excludes data flow-related matters from dispute settlement, these developments indicate that China does not regard these sensitive issues as redlines anymore. Domestically, Hainan Free Trade Port has put data flow into test already.²⁰ The relevant domestic laws and draft texts are currently being reviewed, with a view to preparing for a potential application to join the CPTPP.

A similar observation applies regarding state-owned enterprises. As discussed by Kurtz and Gong, and by Hoekman and Sapir in their contributions, the inclusion of provisions on SOEs in the CAI suggests China may accept disciplines concerning some sensitive issues if there is policy room to maintain its freedom to regulate services sector activities. These examples of convergence on key issues among major players certainly do not mean negotiations will be successful but they provide a basis for the large services trade powers to sit at the negotiating table. A necessary condition is that the ability to regulate complements flexibility in the form of negative lists and hybrid scheduling. Assuring the freedom to regulate is a matter of common concern, given regulatory preferences and approaches differ across countries. How to understand the term 'legitimate public policy objective' will be an important element of any negotiation (Desierto 2015), including how such concepts relate to general exceptions and security exceptions. The well-developed WTO jurisprudence, including on GATS Article XIV (General Exceptions), has demonstrated how difficult it is to satisfy the two-tier test (Mishra 2020).²¹ After all, an exception is an exception which is not supposed to be treated as a normal right of all WTO members. On the other hand, the exception route leaves room to safeguard genuine legitimate public policy objectives, which makes it a useful tool in striking the delicate balance between service liberalisation and the legitimate right to regulate if appropriately employed in practice.

LESSONS FROM THE TISA NEGOTIATION

The US rejected China's application in September 2013 to join in the TiSA negotiations, despite support from the EU,²² Korea, and Singapore, among others.²³ The US was concerned that China's participation would result in a watering down of ambition and

18 EU-China Comprehensive Agreement on Investment, Section II, Investment Liberalization, Sub-Section III, Financial Services, Article 1 (*Scope and Definition*), paragraph 3, (a) (B) 11 (*provision and transfer of financial information, and financial data processing and related software*).

19 Regional Comprehensive Economic Partnership (RCEP), Chapter 12 (*Electronic Commerce*).

20 The Central Committee of Chinese Communist Party & The State Council of China: Master Plan for Hainan Free Trade Port, Section II (*Institutional Design*), sub-section 6 (*dataflow with security and order*), June 1, 2020. The draft Law on Hainan Free Trade Port released on January 1, 2021, in its Article 42, also provides that Hainan establish a secure, orderly, and convenient data flow system.

21 See also WTO Analytical Index, GATS - Article XIV (Jurisprudence), https://www.wto.org/english/res_e/publications_e/ai17_e/gats_art14_jur.pdf (last visited April 27, 2021).

22 EU Backs China Joining Talks on Trade in Services Agreement (TiSA), March 31, 2014, <https://www.neweurope.eu/article/eu-backs-china-joining-talks-trade-services-agreement-tisa/> (last visited April 4, 2021).

23 For discussions of the TiSA negotiation, see Di Lieto and Treisman (2018) and Raza et al. (2018).

drive talks to a dead end (Viola 2020). While to some extent understandable, given the major differences between the US and China on several issues, the developments noted above suggest a re-assessment is in order. China's participation in any services trade negotiation is critical, given the size of the Chinese market and internal and external demands for structural transformation of the economy towards services. Any proposal to engage in plurilateral negotiations on services – whether based on a PTA or an OPA track – that does not include China, will greatly reduce the potential benefits of whatever is agreed.

A new JSI negotiation on services should focus on expanding the coverage of GATS (Delimatsis 2020). In this regard, TiSA negotiators first tried to exchange the best commitments that the participants had undertaken in their PTAs. Reportedly, this approach made substantial progress in generating market access offers that went well beyond GATS commitments (Marchetti and Roy 2013). This approach may still serve as a reasonable starting point for a new JSI negotiation on services. For example, the CAI covers services market access liberalisation via mode 3 (commercial presence) and provides an example of China's best services commitments thus far in most services sectors. In principle it should be feasible for China to extend its CAI commitments to many other participants, because of the importation of substantive treatment via MFN clauses contained in the treaties concluded between China and those countries, unless provided otherwise.²⁴ Furthermore, CAI is an investment agreement rather than a trade agreement, implying neither China nor the EU can invoke GATT Article XXIV or GATS Article 5 to prevent the spillover of the benefits contained in the CAI to other parties. As noted, insofar as the prospects for ratification of the CAI by the EU have been affected negatively by recent political developments, the incentive to pursue an OPA on services under WTO auspices increases for other WTO members.

Beyond exchanging best PTA and investment agreement commitments, the liberalisation modalities used in the negotiation, i.e. negative vs. positive list approach to scheduling commitment, or a combination of both, is an important factor (Adlung and Mamdouh 2014). The flexibility of the hybrid scheduling method adopted in the TiSA negotiations may help attract more WTO members to join the negotiation. The TiSA hybrid approach builds on the GATS, providing for commitments on national treatment for all services sectors based on a negative list, and market access commitments on a positive list.²⁵ Recent PTAs, including RCEP, China-Korea FTA, and China-Australia, adopt different types of hybrid approach, allowing concluding parties to use different scheduling methods within a prescribed period. This approach offers flexibility where necessary.

24 There have been an array of controversies regarding whether and how the standard of treatment in investment treaties can be exported to other treaty parties via MFN clauses, in particular as regards their scope of application. See e.g., Batifort and Benton Heath (2018).

25 See Marchetti and Roy (2013), European Parliament (2013).

CONCLUSION

The WTO membership has started to move down the path of plurilateral cooperation, a mechanism that was part of the GATT, and then largely abandoned in conjunction with the creation of the WTO and the associated Single Undertaking approach in the Uruguay Round negotiations. Reflecting the steady expansion in WTO membership over time and the resulting increase in the heterogeneity of the membership, in conjunction with the rapid growth and increasing share of global output and trade accounted for by emerging economies, progress in the WTO became ever more difficult. The shift back to plurilateral negotiations implies a shift back to the past (Hoekman and Mavroidis 2021).

A feature of the Doha Round negotiations is that these focused primarily on issues other than services, notwithstanding the increasing role of services in economic activity across all countries. The CAI, RCEP, and the JSI talks on e-commerce and services domestic regulation suggest an open plurilateral agreement on trade in services should be considered by China and the EU. Such an initiative would need to attract the US and other major economies to be meaningful and to be feasible. But our presumption is that an initiative to this effect, that is jointly supported by China and the EU, should attract interest among the signatories of recent deep PTAs and the countries that were engaged in the TiSA talks. This can build on the sectoral offers that were tabled in TiSA and in the exploratory market access discussions on different clusters of services that are currently underway in informal open-ended meetings of the WTO Council on Trade in Services, including on logistics, financial, tourism, environmental, and agriculture-related services (Drake-Brockman et al. 2021).

A fundamental challenge confronting any plurilateral initiative on services trade that encompasses market access is to achieve a critical mass of participation, thus permitting the outcome to apply to all WTO members on an MFN basis. If so, the outcome of plurilateral talks can simply be included in participating WTO members' GATS market access and national treatment schedules and/or under GATS Article XVIII insofar as an agreement includes additional commitments. The GATS' design permits extension on a plurilateral basis, in contrast to the GATT, greatly facilitating incorporation of an OPA on services into the WTO.

If an insufficient number of countries participate and critical mass is not obtained, so that (some elements of) the agreement can only be applied on a discriminatory basis, the sole option currently available to the countries involved is to embed the outcome of talks in a PTA. As argued by Hoekman and Mavroidis (2015), this is inferior to incorporating the outcome of discussions into the WTO as an Annex 4 agreement. The latter ensures greater transparency and scrutiny, both at the time of conclusion of draft agreements, and over time, following implementation of the agreement. Moreover, incorporation under Annex 4 assures the option for any WTO member to join the agreement at a later stage, something that most PTAs do not do. However, the need for explicit consensus by all WTO members for incorporation of new agreements under Annex 4 of the WTO makes this an

unlikely option. Should an agreement result in a PTA this might help motivate an overdue deliberation in the WTO on the consequences of the very high bar now confronting new Annex 4 agreements. Agreeing on criteria that should apply to enable groups of WTO members to cooperate on a discriminatory basis under the umbrella of the WTO, as opposed to encouraging them to go outside the WTO, could reduce the incentive for WTO members to negotiate ever more PTAs.

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