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India and Trade Facilitation in Services (TFS) Agreement: Concerns and Way Forward

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Abstract

Services are a major component of global gross domestic product and employment, and a rising component of global trade and investment flows. This is the largest sector of the Indian economy contributing significantly to economic growth and foreign investment flows. India is among the top ten World Trade Organization member countries in trade in services, and the country has a positive trade balance in services. However, global trade in services faces a number of barriers at the border and behind the border, which makes it difficult for service providers from developing countries such as India to access key markets in their preferred modes of services trade.

Given this background, this paper examines how trade in services can be liberalised within the WTO framework. It presents some of the recent estimates of trade costs related to barriers to trade in services, and examines why it is difficult to measure trade facilitation in services. It then examines India's proposal on Trade Facilitation in Services (TFS), highlighting the benefits, gaps in the proposal, issues and way forward. The paper is based on secondary information analysis, and discussion with policymakers and experts from India and abroad.

Keywords: *services, trade facilitation, trade costs, trade agreements, WTO, India*

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List of Abbreviations

ASEAN	Association of Southeast Asian Nations
BPO	business process outsourcing
CWS	Centre for WTO Studies
EU	European Union
FDI	foreign direct investment
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GVA	gross value added
IT	information technology
ITRS	international transaction reporting system
LDCs	least developed country
OECD	Organisation for Economic Co-operation and Development
RBI	Reserve Bank of India
RCEP	Regional Comprehensive Economic Partnership
STRI	Services Trade Restrictiveness Index
TFA	Trade Facilitation Agreement
TFS	Trade Facilitation in Services
TiSA	Trade in Services Agreement
US	United States
USD	United States Dollar
WPDR	Working Party on Domestic Regulation
WTO	World Trade Organization

India and Trade Facilitation in Services (TFS) Agreement: Concerns and Way Forward

Arpita Mukherjee, Avantika Kapoor

1. Introduction

Services are a key rising component of global Gross Domestic Product (GDP) and employment. In 2015, the services sector contributed approximately 69 per cent to the global GDP[1]. The contribution of services to the GDP is even higher for developed countries. For example, in the United States (US), services account for 80 per cent of the GDP. In 2015, services contributed to 50.9 per cent to global employment.[2]

Services are also a growing component of global trade and investment. Globalisation, reforms, liberalisation, technological development, greater mobility of people, development of new business models (such as business process outsourcing, etc.), among others have enhanced the growth of international trade in services, which increased from USD[3] 2,905 billion in 2001 to USD 9,502 billion in 2016. In the same year, according to the World Trade Organization (WTO), commercial services accounted for approximately 22.8 per cent of total world trade (WTO, 2017).

Existing literature shows that with the emergence of the concept of global production network, there has been development of distinct services activities (such as logistics services) within the global value chain of goods (Brockman and Stephenson, 2012; Gereffi *et al*., 2001). Efficiency of such services improves the global competitiveness of the manufacturing and agriculture sector. In addition, with the rise in outsourcing of services and development of new business models, there is a creation of a services value chain (see Rubalcaba *et al.*, 2012). Thus, efficiency and global competitiveness of the services sector are needed not only for the performance of this sector but also for improving productivity in the manufacturing and agricultural sectors. In other words, any barrier or impediment to trade in services can not only adversely affect the competitiveness of the services sector, but also the efficiency and performance of manufacturing and agriculture.

Focusing specifically on India, services sector is a key component of India's GDP, employment, trade and foreign direct investment (FDI) flows (Bhattacharya and Mitra, 1990). It accounted for approximately 53.1 per cent in India's gross value added (GVA)[4] in 2015-16,

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1 World Bank database accessible at https://data.worldbank.org/indicator/NV.SRV.TETC.ZS (accessed on October 10, 2017)

2 See Economic Survey of India (2016-17) Page 232 accessible at http://indiabudget.nic.in/es2016-17/echap09_vol2.pdf (accessed on October 10, 2017)

3 United States Dollar

4 See http://mospi.nic.in/sites/default/files/reports_and_publication/cso_national_accounts/Chapter%202.pdf (accessed on October 10, 2017)

making it the single largest contributor to India's overall value addition.[5] The contribution of services sector in India's GVA has increased from 49 per cent in 2011-12 to 53.1 per cent in 2015-16.[6] The services sector is the second largest employer after agriculture, and according to the Economic Survey of India (2016-17), it employed around 28.6 per cent of the total workforce in 2016.[7]

India is among the top ten WTO member countries in global trade in services. In 2016, India was ranked as the 8th largest exporter and 10th largest importer of services (WTO, 2017). India's share in global export of services has increased from 2 per cent in 2005 to 3.3 per cent in 2016, and its share in global imports has increased from 2.3 per cent in 2005 to 2.8 per cent in 2016.[8] India's total trade in services has increased from USD 112.8 billion in 2005 to USD 295.5 billion in 2016. Further, the share of trade in services in India's total trade increased from 22.2 per cent in 1991 to 32.1 per cent in 2016.[9]

Services account for the largest share in India's FDI inflows and outflows. According to the Department of Industrial Policy & Promotion, Ministry of Commerce and Industry, the services sector was the largest sector attracting FDI inflows, which was around USD 61.36 billion between April 2000 and June 2017, with a share of 18 per cent.[10] The services sector also constitutes over 50 per cent share of India's FDI outflows.[11]

Since the 1990s, reforms and liberalisation have enhanced India's trade in services. In the post-reform period, India's services trade recorded substantial growth (Dash and Parida, 2012) and since 2004, the country has had a positive trade balance in services. India enjoys global competiveness in information technology (IT) and business process outsourcing (BPO) services, which has increased services' exports manifold. Existing literature also shows that there have been changes in India's composition of services trade - from traditional services such as travel and transport towards knowledge-based and business services (Chanda, 2002; Mukherjee, 2013). The high GDP growth, large consumer base and unsaturated market have made India an attractive destination for foreign investment. The country needs foreign investment and technology in services such as infrastructure services, and the successive governments have progressively liberalised the services sector such as telecommunications to attract FDI. Thus, India has both export and import interest in services.

Existing studies also show that trade in services faces a number of barriers in foreign market (for details, see Borchert *et al.*, 2013; Walsh, 2006; Stern, 2000; Findlay and Warren, 2013). These can be at the border or behind the border. They can be classified as barriers to market

5 Calculated from the National Accounts Statistics of the Ministry of Statistics and Programme Implementation (MOSPI).
6 Source: Calculated from the National Accounts Statistics of the MOSPI.
7 See Economic Survey of India (2016-17), page 232 accessible at http://indiabudget.nic.in/es2016-17/echap09_vol2.pdf (accessed on October 10, 2017)
8 Calculated from UNCTAD Statistics.
9 UNCTAD Database on 'International Trade -Services', available http://unctadstat.unctad.org/wds/TableViewer/tableView.aspx (accessed on October 10, 2017)
10 Source: http://dipp.nic.in/sites/default/files/FDI_FactSheet_June2017_2_0.pdf (accessed on October 10, 2017)
11 Calculated from https://rbi.org.in/Scripts/Data_Overseas_Investment.aspx (accessed on October 10, 2017)

entry and operations, such as restrictions on foreign investment, discriminatory treatment for foreign service providers or subsidies and other favourable treatment to domestic firms, and barriers related to stringent regulation and procedural bottlenecks. Such barriers reduce the potential gains from trade in services, especially for India, which is globally competitive in export of services.

It is also important to note that Trade Facilitation Agreement (TFA) in the case of goods does not address market access issues such as tariff reduction or removal of quantitative restrictions. Similarly, in case of services, trade facilitation is concerned with procedural and administrative impediments and not with market access and national treatment issues, which are expected to be dealt with substantive multilateral trade negotiations or in plurilateral platforms.

Given this background, this paper examines how trade in services can be liberalised within the WTO framework. It presents some of the recent estimates of trade costs related to barriers to trade in services, and examines why it is difficult to measure the gains from trade facilitation in services. It then examines India's proposal on Trade Facilitation in Services (TFS), highlighting the key benefits, gaps in the proposal, issues and way forward. The paper is based on analysis of secondary information, and discussion with policymakers and experts from India and abroad.

The layout of the paper is as follows. The next section – Section 2 – provides a brief overview of the General Agreement on Trade in Services (GATS) framework, and liberalisation of services under bilateral and regional trade agreements. Section 3 looks at existing studies on barriers to trade in services and trade costs. Section 4 discusses India's proposal for a TFS Agreement in the WTO, and the last section – Section 5 – is based on in-depth meetings with Indian and foreign policymakers and experts. It examines their views on the benefits and concerns of the proposed TFS Agreement and the way forward.

2. Trade in Services and GATS

Given the importance of services in global trade and FDI flows, the Uruguay Round (1986-1994) of WTO negotiations[12] for the first time introduced services into multilateral trading system. The GATS, in principal, covered all service sectors except services supplied in the exercise of government authority, and aimed to progressively liberalise trade in services through successive rounds of negotiations. The GATS classified services trade into four different modes as is given in Figure 1.

[12] See https://www.wto.org/english/thewto_e/minist_e/min98_e/slide_e/ur.htm (accessed on October 11, 2017)

Figure 1: A Definition of Different Modes of Trade in Services

Mode 1 'Cross-border supply': this includes all the services supplied from the territory of one member into the territory of another member. For example, an economic consultant providing her services overseas from her country.

Mode 2 'Consumption abroad': this includes consumption in the territory of a member by a service consumer of another member. For example, consumption of services by international tourists.

Mode 3 'Commercial presence': this includes the presence of service provider in the territory of another member. For example, joint venture of a foreign service provider with a domestic business

Mode 4 'Movement of natural persons': this includes provision of services through the presence of natural persons of a member in the territory of another member. For example, doctors of one nation travelling to another nation to provide their services.

Source: Extracted from 'GATS Training Module: Chapter 1 Basic Purpose and Concepts', available at https://www.wto.org/english/tratop_e/serv_e/cbt_course_e/c1s3p1_e.htm (accessed on October 10, 2017)

The GATS contains two kinds of provisions:

- **General obligations** – some of these are applied to all service sectors (for example, transparency) and some only to scheduled specific commitments (for example, Article XI: Payments of Transfers)

- **Specific Commitments** – these are negotiated undertaking particular to each GATS signatory

To ensure transparency, GATS Article III[13] requires each member country to publish all measures of general applications which pertain to or affect the operation of the Agreement. Countries are also required to publish international agreements pertaining to or affecting trade in services. In other words, the Council of Trade in Services will have to be informed, at least annually, of the introduction of any new, or any changes to existing laws, regulations and administrative guidelines. WTO member countries can make a request regarding specific information, which the concerned country will have to provide promptly. Article III requires member countries to establish enquiry points to provide specific information to other members.

In terms of making commitments, WTO member countries negotiate and undertake commitments to liberalise market access and/or national treatment in specific sectors in what

[13] See https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm#ArticleIII (accessed on October 11, 2017)

is known as sectoral schedule of commitments and across all or several sectors in the horizontal schedule of commitments. Commitments can be full (with no restrictions), partial (where the restrictions are mentioned) or unbound (where no commitments are made). GATS follows a positive list approach to liberalisation, and countries have been given the flexibility to choose the sectors and modes they want to liberalise.

The Uruguay Round was the first round of WTO negotiations. The second round of WTO negotiations – the Doha Round - is ongoing. In this round, India has been a proponent of liberalising services trade, especially in Modes 4 and 1. The progress of the Doha Round has been slow and the negotiations are still ongoing.

In the Uruguay Round, there was limited liberalisation of trade in services and the WTO member countries did not even bind their then existing autonomous liberalisation. A number of countries kept Mode 1 unbound due to reasons related to technical unfeasibility. However, with technological changes and advancements, a number of services can now be delivered through Mode 1, which was previously not possible. Among the four modes, Mode 2 received the maximum liberalisation in the Uruguay Round. Commitment in Mode 3, i.e., commercial presence, was mostly partial, and Mode 4, i.e., movement of natural persons, was the least liberalised mode of trade. Most WTO member countries kept Mode 4 unbound in sectoral schedules and have referred to their horizontal schedules of commitments. Countries such as India have raised concerns that their mode of primary export interest, i.e., Mode 4, has not been adequately liberalised in the Uruguay Round (see Chanda 2002).

The Doha Round of WTO negotiations was launched at the Doha Ministerial Conference in November 2001[14] as a Development Round. The negotiations in this Round were expected to take care of the development concerns. However, the slow process of the Doha Round, inability of countries to reach consensus and the need for liberalisation of trade in services has led to two key developments –

- Plurilateral negotiations under the Trade in Services Agreement (TiSA). It is based on the GATS and it focuses on opening up markets and improving rules in areas such as licensing, financial services, telecommunications, e-commerce, maritime transport, and professional services. Negotiations on TiSA are ongoing but India is not a member of the TiSA.

- Proliferation of trade agreements. As on October 5, 2017, 152 trade agreements have been signed and are in force, which encompass services.[15]

As a major exporter and importer of services, India is a proponent of services liberalisation both in the Doha Round and through its trade agreements. In the WTO, India specifically pushes for liberal commitments in Mode 4 and Mode 1, and in sectors such as computer services where the country has an export interest. India prefers to sign comprehensive trade agreements which include liberalisation of services, investment, trade facilitation, and

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14 Source: https://www.wto.org/english/tratop_e/dda_e/texts_intro_e.htm (accessed on October 13, 2017)
15 Source: http://rtais.wto.org/UI/PublicSearchByCr.aspx (accessed on October 12, 2017)

cooperation along with liberalisation of trade in goods. Till date, India has signed bilateral agreements covering services with the Association of Southeast Asian Nations[16] (ASEAN), Malaysia, Japan, Republic of Korea, and Singapore. India is negotiating bilateral agreements which will encompass services, with countries such as Canada, New Zealand, and Australia, and regional blocks such as the European Union (EU). India is also a part of the Regional Comprehensive Economic Partnership (RCEP) negotiations, which includes ASEAN and six countries; namely, Australia, China, India, Japan, Republic of Korea, and New Zealand.

Although there is an intention on the part of the Indian government to push for liberalisation of services through its bilateral/regional trade agreements, India's commitment on trade in services in its bilateral/regional trade agreements are for some sectors/sub-sectors better than the Revised Offers[17] submitted to the WTO during the Doha Round of negotiations, while for others they are lower than the Revised Offers. In all cases, India's commitments in services in its bilateral/regional trade agreements are lower than or equal to the current autonomous regime/level of unilateral liberalisation. Thus, India has not bound its current level of services liberalisation in trade agreements nor has it given any forward-looking commitments in its trade agreements (for details see Mukherjee, 2008). In other words, India has not used its trade agreements to implement domestic reforms, unlike countries such as China or Singapore.

In terms of the framework of the trade agreements, it is important to note that bilateral and regional trade agreements may or may not follow the GATS framework and they can be GATS-plus (that is going beyond the scope of GATS) (see Horn *et al*., 2009). Trade agreements can follow both a positive and negative list approach in scheduling commitments (see Lesher and Miroudot, 2006). Agreements of key developed countries such as the US and EU have also sought regulatory commitments (see De Bievre, 2006; Abbott, 2011). India has followed the GATS framework and a positive list approach in scheduling commitments and its trade agreements are not GATS-plus.

While countries have adopted multiple routes – WTO/GATS, plurilateral negotiations, regional agreement, bilateral trade agreements, and autonomous liberalisation to address barriers to trade in services, studies show that there are several barriers to trade in services which undermine the benefits of trade liberalisation and add to trade costs. The next section looks at the barriers and their perceived costs.

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16 ASEAN member states include Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

17 WTO negotiations are based on request offer approach in which countries make requests to their trade gin partners to liberalise sectors of their trade interest. Trading partners then examine the requests, looks at their own domestic compulsions and make the offers. Negotiations are also based on reciprocity, which implies that countries seeking commitments may have to give commitments in areas of export interest to its trading partners.

3. Barriers to Trade in Services

A number of studies have shown that trade in services is subject to a number of across-the-border and behind-the-border barriers. Broadly, there are three different types of barriers to services trade (Figure 2).

Figure 2: Barriers to Trade in Services

Market Access Barriers

- A country is said to have imposed a market access barrier if it does not allow (or partially allow with some restrictions) foreign services or service providers to enter and operate in its market.

National Treatment Barriers

- A national treatment barrier exists when foreign services or service providers are allowed to enter the market but are treated less favourably than domestic service providers. For example, subsidies to local companies or tax exemptions for them.

Regulatory Barriers

- Stringent regulations such as work permit and visa requirements, or licensing conditions can act as a barrier.

With regard to market access barriers, GATS Article XVI presents the following six limitations on:

- The number of service suppliers
- Total value of service transaction or assets
- Total number of service operations/quantity of output
- Type of legal entity
- Number of natural persons supplying the service
- Participation of foreign capital

Commitments under the GATS primarily address market access and national treatment related barriers. It is possible for WTO member countries to make additional commitments in regulatory areas such as licensing, qualifications and standards, which are outside the scope of market access and national treatment as defined in the GATS. In the case of telecommunications sector there is a Reference Paper based on which WTO members took additional commitments on procedural and administrative matters. Trade Facilitation in services is precisely concerned with removal of procedural and administrative bottlenecks. It is expected to make the market access commitments more transparent, predictable and clear and reduce delays and cumbersome procedures.

Before one examines how to identify, list and quantify barriers to trade in services, it is important to note that analysis of trade in services flows itself is difficult to measure and quantify. Due to this, while services contribute to over two-third of economic activity, only around one-fifth to one quarter is measured on a balance of payments basis (see Miroudot and Shepherd, 2015). The WTO has tried to provide some estimates of trade in services classified by the four modes of supply (Table 1).

Table 1: Trade by Different Modes of Supply of Service: WTO Estimates

Mode of Supply	Estimated share (percentage)
Mode 1: Cross-border supply	25-30
Mode 2: Consumption abroad	10-15
Mode 3: Commercial presence	55-60
Mode 4: Movement of service suppliers	≤5

Source: Extracted from Sauvé (2017)

Some experts in India have argued that this may be an underestimation of Mode 4 trade. Since services are embedded in goods trade, organisations such as the Organisation for Economic Co-operation and Development (OECD) have attempted to use a value added approach to estimate services trade. At a disaggregated level, countries are trying to improve the data collection process with respect to services trade using both official sources and surveys (for details see Mukherjee *et al.*, 2016). India is also trying to develop a robust system of services trade data collection by using surveys to complement the trade data generated by Reserve Bank of India (RBI), through the international transaction reporting system (ITRS) in which foreign exchange transactions channelled through banks and authorised dealers are reported to the RBI.

Existing studies have shown that barriers to trade in services mostly exist in terms of non-tariff barriers, which are more difficult to measure and address than tariff barriers. At the policy level, domestic sensitivities and lack of information to the extent where barriers can restrict services trade make the analysis of the barriers a difficult process (Findlay and Warren, 2013). In case of services, for measuring the barriers, evidence has to be collected on the kind of measures which can be implemented by different nations for each services sectors/sub-sectors that can act as a barrier to trade for a foreign service provider. It is also difficult to segregate between regulations and market access barriers, especially for certain modes such as Mode 4, which makes it difficult to identify barriers to trade facilitation in services.

Regulations can be undertaken for various reasons, including safety and security of the country or for prudential purposes (for example, banking sector). Thus, all regulations cannot be treated as a barrier. Impact of a policy can be different for different countries depending on their size, economic significance, etc., and by sectors and, therefore, to provide a rank for each perceived discriminatory policy measure is not easy.

Certain studies have identified barriers to trade in services and examined how they have impacted services trade adversely. These barriers can be related to quantity-based restrictions (such as quotas and local content requirements) (Mattoo and Fink, 2004), direct involvement by the government where the government may favour local service providers and discriminates against foreign firms, barriers related to price-based instruments such as visa fees and entry or exit taxes, and other legal and regulatory restrictions (Walsh, 2006). Most of these studies focus on market access barriers along with regulatory and discriminatory issues. For example, Borchert *et al*. (2013) collected services trade policy data for 103 countries and the resulting database revealed that various restrictions on entry, ownership, and operations exist in services trade. In their study market access was observed to be unpredictable because the allocation of new licenses remained highly discretionary in many countries. The study concluded that some of the fastest-growing countries in Asia had restrictive policies in services, whereas some of the poorest countries were relatively open.

A number of studies have attempted to estimate services trade costs. These studies have pointed out that trade in services requires the movement of people and capital between countries, and in most countries, apart from market access and national treatment related restrictions, there exist a range of legal and regulatory requirements that have to be complied with by the foreign service providers, which can add to the trade cost. The distance of supplier and consumer, different languages and culture, preference of consumer for domestic services, etc., can add to the trade cost. However, none of them have been able to estimate the cost only due to administrative and procedural bottlenecks or lack of trade facilitation in services.

Hoekman (1995) used frequency ratios to estimate the relative degree restrictiveness of market-access barriers to services trade across multiple countries and sectors (such as postal services, telecommunications, etc.). He established a set of benchmark tariff equivalents for individual sectors to reflect the degree to which market access to these sectors was restricted. Some of the shortcomings of this estimation of barriers included the fact that different types of restrictions were given equal weight and were not distinguished according to their economic impact, and that market access restrictions were the only ones taken into account in this estimation.

Warren and Findlay (2000) measured price-cost margins for the banking sector and estimated that the price impacts of restrictions on foreign banks are the highest for Indonesia, the Philippines, Malaysia, Chile, Singapore, South Korea, and Thailand, and relatively low in Argentina, Australia, Canada, the EU, Hong Kong, Switzerland, and the US.

Deswal (2014) examined the magnitude of services trade costs across countries and across sectors by estimating the trade barriers for the total services sector and 5 disaggregated service industries in 58 countries for the year 2005. She found that average incoming total services trade costs of the high income countries are much smaller than those of the upper middle and lower middle income countries. She concluded that upper middle and lower middle income countries are far more restricted with respect to services trade and trade costs can be significantly low if destination import barriers are reduced in those countries. India was among the lower middle income countries in her study.

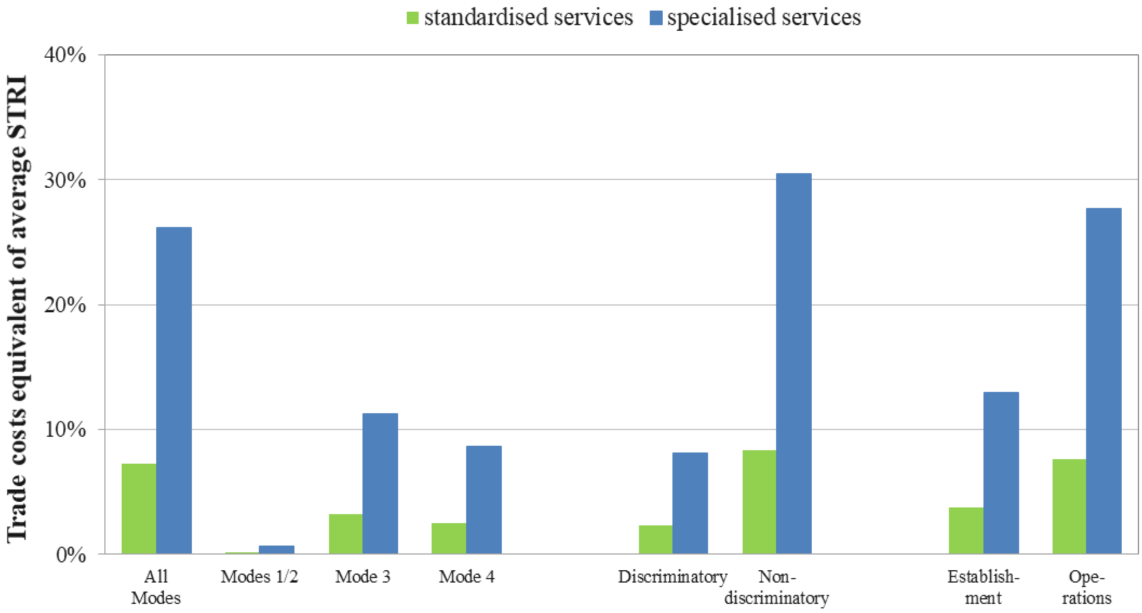
Shepherd (2010) measured trade costs in services for 61 countries and 12 services sectors and concluded that trade costs are much higher in the services sector than in goods – about double, on average. The absolute levels of trade costs in services were over 100 per cent in all cases, and over 200 per cent for India. Further, while trade costs in goods have declined by more than 15 per cent over the last ten years, for services, they have slightly increased.

Many of these studies have concentrated on specific sectors and countries. To do more robust cross-country comparisons of trade barriers, international organisations such as the World Bank and the OECD have tried to quantify and estimate the measurement of barriers to trade in services by constructing different services trade restrictiveness indices for a larger set of countries and sectors. Some of these are OECD's Services Trade Restrictiveness Index (STRI), World Bank's Services Trade Restriction Database and Australian Productivity Council's Trade Restrictiveness Index. Among these indices, the OECD's STRI is most extensively used in recent studies on trade costs. For example, Benz (2017) estimated the ad valorem tariff equivalents of STRI for cross-border trade in six services sectors namely computer services, construction, courier services, telecommunications, maritime transport and commercial banking. He found them to be ranging as high as 2000 per cent when trade flows are relatively inelastic, to between 20 per cent and 300 per cent in most other sectors. The study also shows that the impact of regulatory reform on the volume of services trade can vary by market size, economic development and geographic size.

Miroudot and Shepherd (2015) use a gravity equation to estimate bilateral trade flows and trade costs in services. Using the OECD's STRI for 18 sectors and 32 countries, they found that the services trade costs are higher for final services compared to intermediate services but that the trade costs have been falling for both these types of services, although the rate of change varies across sectors. The authors concluded that government policy is an important determinant of services trade costs.

Nordas and Rouzet (2017) used STRI and found that services trade restrictions are negatively associated with both imports and exports of services, and services suppliers from less open countries are less competitive abroad. Bilateral differences in regulation are also found to curtail services trade over and above the impact of the trade liberalisation level. At the margin, regulatory differences have a larger effect on trade flows the lower the level of the STRI. Nordas (2017) also provided estimates of trade cost equivalent services trade restrictions by various modes (see Figure 3).

Figure 3: Trade Costs Equivalents of Services Trade Restrictions



Source: Extracted from Nordas (2017)

Although these indices are useful tools for measuring restrictiveness in trade, there are some issues. For example, in case of the STRI, critics have argued that it has a uniform method of allocation for policy areas across all countries, which may not actually be the case. The impact of regulations in a given policy area may be different for different countries based on the comparative advantage of a country in a given sector and other factors. For example, policy measures to remove barriers to competition in a country with a monopolistic market structure are likely to have much higher trade impact than in countries with a relatively more competitive market structure. Moreover, STRI does not include policy measures for export promotion (schemes and rebates) that may be offered to both domestic and foreign service providers, which is commonly known as positive discrimination. Being a trade restrictiveness index, it is only able to capture the trade restrictiveness measures, not the export/trade supporting measures. Certain services sectors may have exemptions for certain laws or there can be sector specific relaxation of certain regulations such as the case of relaxed labour regulations given by some states in India in computer services to allow women to work at night, which is an example of a positive discrimination that the sector enjoys. Such positive discrimination is not reflected in the STRI.

In India, there are a few survey-based studies which have tried to identify the barriers faced by Indian service providers in key markets (see Chanda, 1999; Mukherjee *et al.*, 2016; Chanda, 2002). These studies have also highlighted that as countries are increasing their market access and allowing foreign investment in services, stringent regulatory and procedural requirements are undermining the market access commitments. Further, with political sensitivities and growing domestic protectionism for certain modes of services trade such as Mode 4, stringent work permit and visa regimes imposed by different countries are increasingly making it difficult for service providers from countries such as India to provide services in some of the key export markets such as the US and the United Kingdom (UK). This probably prompted India to push for a TFS Agreement in the WTO as has been the case of a TFA in goods.

Before one discusses India's proposal on a TFS agreement and the draft and revised text, it is important to note that while a number of studies have attempted to estimate the services trade costs and barriers, none of them have estimated how much cost will be reduced through a TFS agreement as has been proposed by India. In other words studies have looked into market access, discriminatory and regulatory barriers but none of them have looked into the trade cost of not getting "meaningful" and "effective" market access.

4. Trade Facilitation in Services in India

The WTO defines trade facilitation as the process of "*simplification and harmonisation of international trade procedures" including the "activities, practices and formalities involved in collecting, presenting, communicating and processing data and other information required for the movement of goods in international trade."*[18] In December 2013, the WTO Members concluded negotiations on a landmark TFA at the Bali Ministerial Conference. The TFA contains provisions for expediting the movement, release and clearance of goods, including goods in transit. It sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues, and contains provisions for technical assistance and capacity building. Services such as logistics services are key components of the TFA.

A number of studies have shown the benefits of a TFA in goods. For example, according to the OECD, '*the implementation of the TFA could reduce worldwide trade costs by between 12.5% and 17.5%. Countries which implement the TFA in full will reduce their trade costs by between 1.4 and 3.9 percentage points more than those that do only the minimum that the TFA requires. The opportunities for the biggest reductions in trade costs are greatest for low and lower middle income countries*.'[19]

Given that India has an interest in services trade and such trade faces restrictions, on October 6, 2016, India presented its proposal on the 'Concept Note for an Initiative on Trade Facilitation in Services' (S/WPDR/W/55) at the Working Party on Domestic Regulation (WPDR) meeting. The purpose of the concept note was to propose an agreement to facilitate reduction in transactions cost associated with unnecessary regulation and administrative burden on trade in services.[20] The agreement aims to achieve transparency, streamlining procedures, and eliminating bottlenecks to trade in services. Subsequent to this, on November 25, 2016, India tabled a communication on Possible Elements of a Trade Facilitation in

[18] Source: https://www.wto.org/english/tratop_e/tradfa_e/tradfa_introduction_e.htm (accessed on October 12, 2017)

[19] http://www.oecd.org/tad/tradedev/WTO-TF-Implementation-Policy-Brief_EN_2015_06.pdf (accessed on September 6, 2016)

[20] For details see the Communication from India to the Working Party on Domestic Regulations, Document S/WPDR/W/55 of the World Trade Organization titled Concept Note for an Initiative on Trade Facilitation in Services.

Services Agreement (S/WPDR/W/57). The overall aim is to ensure that market access arising out of the existing and future liberalisation commitments are effective and meaningful.[21] On February 23, 2017 India submitted a draft legal text on a "Trade Facilitation Agreement in Services" at the WTO.[22] This proposal received mixed response from WTO members. While some members appreciated the proposal and the proposal generated debate and discussions on services, several developed and developing country members expressed concerns on the scope and content of the draft agreement.[23] Based on the feedback received, India presented a revised text on July 27, 2017.[24]

The legal text dated July 27, 2017 states that the provision of the TFS agreement will apply to measures affecting trade in services in sectors where specific commitments have been undertaken. Thus, the focus of the agreement is on making existing market access meaningful and not on getting new market access. The aim of the agreement is to complement GATS and not substitute it. To address the concerns of other WTO member countries, the revised version is broader and more generic in terms of defining terms such as "competent authorities" and "fees and charges". The term "immigration formalities" used in the February draft has been replaced by "measures relating to entry and temporary stay". Indeed, the term "immigration formalities" is controversial, as India has been arguing in the WTO that Mode 4 is related to temporary movement and not permanent immigration. The revised version also removed clauses which concern members' right to regulate. For example, the clause on "Appeals and Review" related to "Administration of Measures" has been deleted. The revised version tried to remove the bias towards Mode 4, and more specifically on addressing immigration issues, which was presented in the February 2017 draft.

The proposed TFS agreement contains some general provisions and mode specific provisions. For example, under Mode 4, the agreement proposes that each member country should put in place adequate mechanism for separate categories of visas that correspond to each category of natural person in respect of which commitments are taken. For Mode 1 or cross border flow of information, the agreement proposes that each member should allow cross border transfer of information (including personal information) by electronic means where such activities are for the purpose of supplying services.

A number of provisions of the February 2017 draft text and the July 2017 revised text are not obligatory but on a best endeavour basis. For example, the July 2017 text states that

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21 For details see Communication from India on the Possible Elements of a Trade Facilitation in Services Agreement submitted on 14 November, 2016, Document No. S/WPDR/W/57

22 Source: https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Language=ENGLISH&SourcePage=FE_S_S002&Context=RD&PostingDateFrom=15%2f02%2f2017&PostingDateTo=28%2f02%2f2017&IsEnglishSelected=True&IsFrenchSelected=False&IsSpanishSelected=False&IsAllLanguageSelected=False&FullTextHash=371857150&languageUIChanged=true (accessed on October 11, 2017)

23 Answer to Unstarred Question 332 raised in Rajya Sabha. Available at http://164.100.47.5/qsearch/QResult.aspx (accessed on October 12, 2017)

24 Source: https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/237950/q/TN/S/W63R1.pdf (accessed on October 12, 2017)

Members shall endeavour to expedite the processing of entry and temporary stay in respect to service consumers who are seeking medical services or such other services that are urgent and/or essential.

The proposed TFS agreement has provisions for cooperation among competent authorities, special and differential treatment for least developed country (LDCs) members, and technical assistance to LDCs in developing and strengthening their institutional capacities. The agreement mentions establishing a Committee on Trade Facilitation in Services, the role of which would be to ensure the smooth operation of the agreement.

5. The Trade Facilitation in Services Agreement: Benefits, Concerns and Way Forward

It is likely that India may push the TFS agreement at the upcoming Eleventh WTO Ministerial Conference in Buenos Aires, Argentina in December 2017. Therefore, it is important to look at the benefits and concerns related to such an agreement. To understand the views of experts on the TFS agreement, its scope and content, and expected benefits and areas of concerns, the authors spoke with policymakers, embassies, services trade experts, and international organisations working on services trade and trade barriers. It is important to note that the TFS agreement is still evolving and hence much of the discussions are related to the draft legal text of February 2017 and revised text of July 2017.

Those who are in favour of a TFS agreement pointed out that such an agreement will help make the market access commitments, undertaken during the Uruguay Round of WTO negotiations and through accession of new members such as China, more meaningful and effective. They pointed out that the TFS agreement can be meaningful if the agreement goes beyond the scope of the Domestic Regulation as given in Article VI.4 of GATS and proposes certain specific measures such as fast track clearances, administration of economic needs tests, etc. Proponents of the agreement pointed out that it can help reduce the delays and cost incurred due to complex processes, administrative and regulatory requirements. This agreement can complement the GATS Article II on transparency, and encourage regulatory cooperation and information and knowledge sharing. It is expected to give momentum to services negotiations in the WTO and increase awareness about how regulatory barriers can adversely affect trade flows, and result in inefficiencies and lack of competitiveness. It is expected to encourage countries to not impose undue restrictions in areas such as entry of foreign workers, which has of late adversely impacted service providers in both developed and developing country markets. In the context of India, experts pointed out that India is one of the key countries whose trade costs are very high. India can use the TFS agreement to implement domestic reforms as it is doing in the case of the TFA in Goods. The uniqueness of the agreement is also that it addresses some mode specific issues, which has been welcomed by some experts.

In spite of these perceived benefits, there are a number of concerns raised on (a) the scope and need for a separate legal text for trade facilitation in services, (b) the issue that there should not be trade facilitation without binding the current level of market access in the

WTO, (c) bias towards Mode 4 liberalisation with India taking no major initiative to liberalise Mode 3 (d) specific provision of the agreement – for example, best endeavour versus mandatory obligation (e) capacity, preparedness and implementation of TFS and (f) regulatory commitments in cross–border trade versus e-commerce negotiations.

(a) Scope and need for the TFS

The core issue raised by experts is to examine the scope and need of the TFS, i.e., what the TFS agreement can do which the GATS cannot address. Since a number of key WTO member countries are already negotiating TiSA, they wanted to know what TFS can offer in terms of (a) additional/meaningful market access or (b) reduction in trade costs which is not covered under TiSA. Further, there are overlaps between TFS and other parts of GATS negotiations such as those under Domestic Regulation. There is already ongoing discussion in GATS on disciplining domestic regulations.

In recent years, there have been a number of comprehensive bilateral/regional trade agreements which are GATS-plus and have provisions for regulatory commitments. Therefore, some experts further question what the TFS agreement can deliver which comprehensive trade agreements such as RCEP cannot deliver. While one can always argue that a bilateral or regional trade agreement can be trade distortive, it is not true for plurilateral agreements such as the TiSA. One major issue raised by the experts is that the TFS agreement undermines the need for removal of barriers to market access as it states that no new market access is required and focuses on Uruguay Round commitments. Countries have move much ahead of Uruguay Round commitments in terms of market access through autonomous liberalisation and domestic reforms.

Studies such as by Marchetti and Roy (2008) found that commitments in the bilateral/regional agreements of WTO member countries are far beyond their commitments in the Uruguay Round, both in terms of scope and depth of commitments. Many of the commitments in bilateral/regional agreements go beyond not only the Uruguay Round commitments but also the Doha Round Offers. Autonomous liberalisation of countries is in many cases greater than the degree of liberalisation in preferential trade agreements. This in itself questions whether market access commitments in the WTO can be taken as a measure of market openness for any trade facilitation agreement. Further, Miroudot and Shepherd (2015) analysed the relationship between regional trade agreements and trade costs in services, and found that despite the proliferation of regional trade agreements, such agreements have not significantly lowered the bilateral trade costs among signatory countries. Autonomous liberalisation or domestic reforms can help reduce trade costs. Trade agreement can only help to ensure certainty of the reform process through binding commitments.

Policymakers from countries which are negotiating TiSA pointed out that a TiSA type of comprehensive services agreement may be more helpful in liberalising services trade than the TFS Agreement (see Stephenson, 2017). Further, negotiating parallel agreements is time consuming and burdensome on economic resources. Some experts questioned the need for such agreement when the plurilateral agreement – TiSA - is already being negotiated by 23 WTO member countries who together account for 70 per cent of world trade in services.

India is not a member of the TiSA and has decided to opt out of it due to certain requirements/contentious clauses such as (a) countries/regions entering into the agreement are required to bind the current level of domestic liberalisation in services, (b) future domestic policy changes by a member country will also automatically get committed under TiSA, and (c) future concessions given to a trading partner under a bilateral treaty may automatically get extended to other members of TiSA. Since TiSA is still under negotiation, it is difficult to conclude the level of liberalisation it will achieve. Nevertheless, some experts pointed out that since India is a proponent of services trade liberalisation, India should consider being a member of TiSA.

(b) There should not be trade facilitation without binding the current level of market access in the WTO

TFS is very complex for small and developing countries such as African countries to implement as it seeks regulatory commitments. Looking at the scope of the TFS Agreement and its implications for India's own services trade liberalisation and domestic policy, the services sector in India can be clubbed under three broad categories depending on the level of liberalisation: significantly liberalised, moderately liberalised and closed (for example see, Arnold *et al.*, 2015). Professional services such as accounting, legal, postal and passenger rail transport services are closed to FDI. There are services such as computer services, where there are no FDI restrictions, while services such as retail and banking are partially open to FDI subject to certain regulations. India is one of the few WTO member countries which is a proponent of services liberalisation but which on its own has a high level of market access/FDI restrictions. Thus, even if India implements TFS, the trading partners would not have effective and meaningful market access in key services sectors in India.

India's own commitments in the Uruguay Round are far lower than the current autonomous regime and hence India's trading partners do not foresee any additional benefits of the TFS agreement while trading with India. A number of services sectors in India including retail, terrestrial broadcasting (FM radio), publishing, banking, insurance and legal services continue to face FDI restrictions due to domestic concerns and sensitivities and the TFS allows India to continue to push for liberalisation in areas such a Mode 4 without opening up its own market.

(c) Biasness towards Mode 4 liberalisation

India is a proponent of Mode 4 liberalisation both in the WTO and in its trade agreements. Mode 4 is a sensitive issue for a number of WTO members including the US, EU, Australia and Singapore and some of them opined that through the TFS India is trying to liberalise Mode 4 without undertaking commitments in Mode 3. While TFS has tried to cover all modes of trade and tried to provide a balance across different modes, India's trading partners are somehow not convinced.

Some experts have pointed out that India's own position in terms of giving access to foreign lawyers or architects is widely debated within the country. Trade negotiations are based on reciprocity. According to the experts, if India is not willing to open up Mode 3 and undertake liberalisation commitments in sectors such as retail, it is unlikely that it will get support to open up Mode 4. Market access restrictions in selected sectors such as retail and legal services have already weakened India's negotiating position in the WTO and its preferential agreements.

The bigger concern that came up during the discussions is that in spite of having competitiveness in a number of services, highly qualified workforce and some of the world's best trade negotiators, India has a defensive position in services negotiations in the WTO and in its trade agreements such as the RCEP. Instead of being a proponent of services sector liberalisation in general, India seems to push only Mode 4 liberalisation or labour mobility which is politically sensitive. While a number of countries acknowledge the need for skilled or specialised labour mobility there are issues related to terrorism, job losses, etc. In the current global environment to push for labour mobility may not be the right strategy.

Further, barriers to Mode 4 are largely market access barriers. There has hardly been any commitment in Mode 4 in the WTO. The challenges that service providers are facing in Mode 4 relate to gaining market access and non-discriminatory treatment. The wider issue is the lack of understanding of the WTO member countries of the benefits to their own domestic economy by having the best workforce. India has pushed hard for Mode 4 liberalisation, but according to experts, India has not been very successful in taking up the Mode 4 issue as a win-win situation for the sending and receiving economy. Instead of working with partner countries to have easier work permits and visa processes, raising the issue in various platforms as a trade barrier has weakened India's position in trade negotiations according to the experts interviewed. They also argued that a proposal in the WTO on liberalising the regulatory regime for workforce mobility does not only include movement of highly skilled professionals from India to key markets, but also involves easier regulations for movement of people within South Asia, opening up India's own market to foreign service providers in sectors such as legal services. This will also entail sensitive issues like terrorism which requires debate and discussion within the country. Given the political sensitivity of liberalising Mode 4 and given that this mode has least liberalisation commitments in the Uruguay Round, a number of experts were doubtful of the impact that the TFS Agreement may have on Mode 4 liberalisation.

Some international experts consider India to be a country which may delay or stall trade agreements. It is, therefore, important for India to have appropriate strategies to counter such allegations and gain support/consensus in the WTO, which is needed to push forward an agreement such as the TFS. India should first portray itself as a country which believes and implements trade liberalisation in services and for this, there is need for services sector reforms and liberalisation.

(d) Specific provision of the agreement – best endeavour versus mandatory obligation

Some experts opined that the scope of the TFS agreement is limited to the committed sectors only and there are voluntary provisions using best endeavour which may not lead to meaningful liberalisation. If a country has made partial commitments (for example, allowing 51 per cent FDI) in the Uruguay Round, how can it make regulatory commitments based on partial market access that it has allowed?

(e) Capacity, preparedness and implementation

In the WTO, proposals are valid only if they have consensus and support of the WTO members. To gain support, there is need for data, information and background research. Unlike countries such as the US and Singapore, which have databases for services trade, India is still developing a framework and process for collection of services trade statistics, and as for data, there is no bilateral services trade data available in the public domain. India also does not have a comprehensive database/business directory for its own service providers engaged in international trade. Thus, there is a paucity of trade data and the lacuna is even more for modes of trade such as Mode 4.

There is need for collection and collation of statistics related to temporary labour mobility by country and the remuneration associated with such movement. This need is even greater for India as a proponent of Mode 4 liberalisation. As discussed earlier, there are some attempts made in India to estimate the barriers related to trade in services. However, none of these data allow for comprehensive cross-country comparisons. Most of the global studies on measuring trade costs as discussed earlier have used the OECD's STRI, but some Indian experts and policymakers have expressed concerns about this index especially when it comes to measurement of sector such as computer services. According to them, the STRI has not adequately captured the highly liberalised computer sector in India and has also not captured the barriers in Mode 4 that service providers from developing countries such as India face in developed country markets. Unless there is a better or alternative measure, India will be ranked as a country with high trade costs in indices such as the OECD's STRI and this calls for domestic reforms. The discussion precisely shows that there is a gap in academic research on issues pertaining to the TFS. It is not only difficult to have an accurate measure of the perceived gains from the perceived TFS agreement, there is also a lack of information on the barriers that Indian service providers face in key markets by different modes of services supply, which can lead to a fairly robust estimate of trade costs. Given that liberalisation and reforms in most countries is an ongoing process, India needs to collect data and information on administrative and procedural barriers faced by its exporters in key markets on a regular basis to have an estimate of trade costs due to such barriers.

While existing databases such as the OECD's STRI can be improved to measure trade costs, it is important for the Indian government to invest in research which will help identify the barriers that Indian service providers' face in key markets, rank them and to examine how such barriers have increased or decreased over time. The barriers should include market access, and regulatory and discriminatory barriers. There is need for collaboration between

Indian researchers and international services experts so that research related to benefits of TFS can be presented in the WTO and other forums to build consensus.

Some experts pointed out that the TFA in goods will also cover trade facilitation in certain services sectors such as transport and logistics services. Further, there are no studies or research on the estimated benefits of the proposed TFS agreement unlike the case of TFA where a number of studies have estimated how such an agreement can lower the trade costs. Overall, one of the key weaknesses of the revised legal text is that it is not backed by academic research which would highlight its benefits.

Focusing on implementation issues that India may face in implementing the proposed TFS agreement, experts opined that India has a quasi-federal governance structure, with some services in the Union List, some in the State List and the remaining in the Concurrent List. When services liberalisation is proposed in such a complex governance structure, it is necessary to study (a) how to ensure uniformity in domestic regulations across states and between the states and centre, (b) how the costs of liberalisation will be incurred and who will incur them, and (c) how the regulations will take into account sensitive uses such as national security, terrorism, protection of culture, protection of infant industry, domestic service providers and jobs. Given that liberalisation of some sectors such as retail are politically sensitive, one also need to look at political consequences of reforms in a democratic set-up. Having said that, there have been studies on services liberalisation and how it would positively impact the economy (see Mattoo *et al*., 2006; Arnold *et al*., 2015; Mukherjee and Goyal, 2014) but these studies have mostly concentrated on a few sectors and have not been used by the government to gain wider domestic consensus/support on the need to open up the market for specific services sectors.

While good regulatory practices such as transparency and fast track procedures are necessary to lower trade cost and improve the competitiveness of the services sector, these are mostly implemented by countries on a voluntary basis to improve their own efficiency and ease of doing business. Such practices enable countries to get foreign investments, which can generate employment. Thus, good regulatory practices and domestic reform requirements are needed to be competitive in a globalised world. If the TFS agreement mandates good regulatory practices, it can impinge upon a country's "right to regulate" due to which such clauses have been removed from the revised version. If good regulatory practices are proposed in an agreement on a voluntary best endeavour basis, experts are not sure whether such an agreement can lead to any streamlining of regulations.

Some experts have raised concerns about the preparedness and/or ability of India to undertake domestic reforms to meet the TFS's commitments. India needs to implement reforms to reduce market access barriers in services. Along with this, as discussed earlier, the country has to improve its image in trade negotiations as a proponent of services liberalisations by binding the existing level of liberalisation in its preferential trade agreements and offering to bind the same in the WTO. At a time when all major countries engaged in services trade have preferential trade agreements, India has not been able to sign a trade agreement with any trading partner (for example, Korea) where Indian service providers have better or equal access to the partner's market, compared to service providers from other countries (for example, the US which has also signed a trade agreement with Korea). This has put Indian service providers at a disadvantageous position in markets such as Singapore, Japan and Korea, countries with which India has trade agreements. In return for removing market access barriers, India can ask its trading partners for better commitments in Mode 4 and for accepting some components of its proposed TFS Agreement in the bilateral/regional agreements.

(f) Regulatory commitments in cross–border trade versus e-commerce negotiations

As India is proposing TFS in cross border trade, the country should also have a clear strategy on its negotiating position in e-commerce. Views of experts on whether India should negotiate e-commerce in the WTO and trade agreements are varied. While these negotiations could impart significant additional momentum to the e-commerce market, some experts believe that the e-commerce negotiations may adversely affect the growth of the infant domestic e-commerce industry (Gupta, 2017). There is support for digitization and digital payments among policymakers but the country has FDI restrictions on e-trading based on the model of operation of the service provider (market place based model versus inventory based model). Thus, there is need for a more detailed study on how India wants to liberalise e-commerce and what should be the country's negotiating strategy in trade agreements.

Overall, the discussion shows that the TFS agreement as proposed by India has renewed interest in trade in services in the WTO. The agreement also has some interesting and useful clauses, and it does highlight the need for services sector liberalisation. However, there is a need for (a) more research, and data collection and collation on the gains from such an agreement (b) building a stronger case for what such an agreement can offer vis-a-vis the existing GATS framework and other mega trade agreements (c) better understanding on how India is going to implement the agreement and what is the cost and process associated with such implementation. Many experts have reiterated that the manner in which India presents its case in the WTO is very important. More precisely, the country has to build consensus to present a case in the WTO and should put a proposal which shows either (a) market access liberalisation or (b) reduction of trade and/or transaction cost. In the domestic front, there is need for more clarity on how India plans to ensure compliance with TFS, given that a number of services can be beyond the jurisdiction of the central government. Further, to build consensus on the agreement, there is need for changing the country's image to a proponent of services liberalisation in international forums and build partnerships.

To conclude, policymakers in India have to work closely with their counterparts from countries/regions which are strong players in services trade to work together to remove barriers to trade in services. There is a need to build trust and support. Most importantly, India needs to implement domestic reforms, especially remove market access barriers in key services sector such as retail, insurance, banking and legal services, and demonstrate strong intentions of supporting services sector reforms and liberalisation.

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