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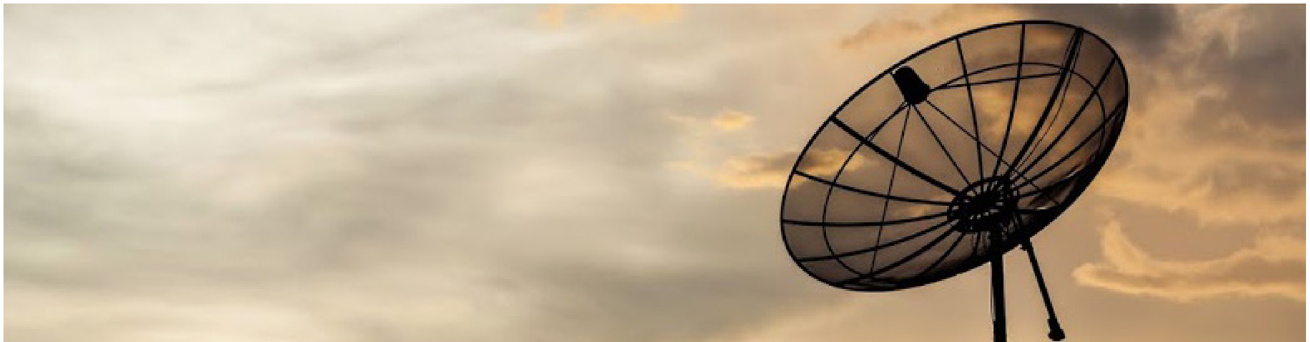

Services Trade and Regulatory Cooperation

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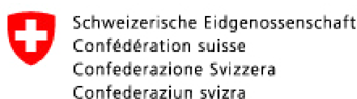

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ABSTRACT

Decades of services trade negotiations have produced a plethora of rules and commitments but very little real liberalization. One reason is a form of "negotiating tunnel vision," which has led to a focus on reciprocal market opening rather than on creating the regulatory preconditions for liberalization. This paper makes four points. First, current trade disciplines are a useful but inadequate restraint on regulatory protection. Second, proposed trade disciplines on domestic regulation add value but do not solve existing problems and can create new "hold back" problems. Third, much more could be achieved through greater emphasis on regulatory cooperation, which is in many cases not just an "add on" but a precondition for further liberalization. Finally, certain forms of regulatory cooperation create a risk of exclusion for non-participants, which can and should be addressed. The paper illustrates these arguments drawing upon recent developments in privacy and data flows, financial services, labour mobility, and competition policy.

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LIST OF ABBREVIATIONS

APEC	Asia-Pacific Economic Cooperation
BCRs	binding corporate rules
DPD	Data Privacy Directive
ECTEL	Eastern Caribbean Telecommunications Authority
EEA	European Economic Area
EFTA	European Free Trade Area
EU	European Union
FDI	foreign direct investment
FDIC	Federal Deposit Insurance Corporation
FTC	Federal Trade Commission
G-20	Group of Twenty
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
IMF	International Monetary Fund
MFN	most-favored nation
MRAs	mutual recognition agreements
SHF	Safe Harbor Framework
SPS	Sanitary and Phytosanitary Measures
TBT	Technical Barriers to Trade
TTIP	Transatlantic Trade and Investment Partnership
UK	United Kingdom
US	United States
WTO	World Trade Organization
ZCC	Zambia Competition Commission

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INTRODUCTION

Decades of services trade negotiations have produced a plethora of rules and commitments but very little real liberalization. One reason is a form of "negotiating tunnel vision," which has led to a focus on reciprocal market opening rather than on creating the regulatory preconditions for liberalization. Greater international cooperation on regulation is needed to deliver both liberalization and enforceable agreements.

Trade negotiators have not ignored domestic regulation, but seen it primarily through the lens of securing access to markets. Thus, the goal has been to ensure that the presence of prudential regulation or the absence of pro-competitive regulation in importing countries does not become a trade barrier. Where market failure due to informational problems—for example, in areas such as financial and professional services—prompts national regulators to impose licensing, qualification, and other requirements, rule making has sought to ensure that these requirements do not unduly burden foreign providers. Where market failure due to monopolies—for example, in network-based services such as telecommunications and transport—allows incumbent firms to frustrate entry and competition, international rules have required national regulation to ensure fair access to essential facilities.

There are two problems with this market access-centered approach. The first is that existing international trade rules and commitments are hard to enforce and have uncertain value. It has always been difficult to strike a balance between allowing space for the legitimate use of domestic regulation while preventing its protectionist abuse. An importer-only approach to trade disciplines risks allowing either less regulatory discretion than is politically unacceptable, or more regulatory discretion than is consistent with predictable market access.

The second problem with this approach is that it does not facilitate new market opening and international commitments by helping national regulators deal with international market failure. A country will be reluctant to open its financial markets unless it is confident that it can prevent financial instability and protect its consumers, or to open its transport and internet-based services markets if it is afraid that the gains from liberalization will be appropriated by international oligopolies. In some cases, such as the supply of services through locally incorporated subsidiaries, the importing country can in principle deal unilaterally with market failure because the provider is in its jurisdiction. But doing so requires adequate regulatory capacity and could lead to higher costs of trade by fragmenting markets (for example, by requiring local capital adequacy or local servers). In other cases, such as cross-border banking, transport, or data-processing services, addressing market failure efficiently requires the cooperation of the regulator in the exporting country.

Greater regulatory cooperation can help address both these problems. The first dimension of such cooperation is the assumption of obligations not just by importing countries but also by exporting countries when negative externalities are transmitted via exports of services. These exporter commitments need not be in the context of trade agreements, but could be secured in other existing or new fora for international regulatory cooperation. What matters is that market access commitments by importing countries would be transparently and predictably conditional on the fulfillment of specific conditions by exporting countries. Importing country regulators would then be reassured that exporting countries will cooperate to protect their consumers' privacy, financial security, and well being from the consequences of international market failures. Rather than require, as at present, importing countries alone to make binding commitments on a most-favored nation (MFN) basis, regardless of the conditions in, or cooperative efforts made by, source countries.

A second dimension of international cooperation is to establish a credible mechanism for regulatory assistance to support liberalization commitments by developing countries (Mattoo 2005, Hoekman and Mattoo 2013). Developing country policymakers would then know that any regulatory inadequacies that could undermine the benefits of liberalization will be diagnosed and remedied before any market-opening commitments take effect. Rather than have, as at present, market-opening negotiations take their course with only ad-hoc links to international assistance for regulatory reform.

The first dimension of cooperation is based on the assumption that greater market opening and commitments would be forthcoming if regulators were offered not just the opportunity to tie their hands as at present, but to secure assistance from source countries to deal with problems they cannot solve on their own. The second dimension is based on the assumption that poorer developing countries would participate meaningfully in negotiations that offered an opportunity not merely to make binding commitments, but also to mobilize assistance for regulatory reform. It is possible that these assumptions are wrong and that there are other impediments to progress. But once the good reasons for holding back from liberalization and making commitments have been identified and addressed, there can be a clear-headed and productive focus on negotiating away the barriers to trade.

In the subsequent sections, this paper makes four arguments.

1. Current trade disciplines are a useful but inadequate restraint on regulatory protection.

2. Proposed trade disciplines on domestic regulation add value but do not solve existing problems and can create new “hold back” problems.

3. More could be achieved through greater emphasis on regulatory cooperation, which is in many cases not just an “add on” but a precondition for further liberalization.

4. But certain forms of regulatory cooperation create a risk of exclusion for non-participants, which can and should be addressed.

CURRENT TRADE DISCIPLINES ARE A USEFUL BUT INADEQUATE RESTRAINT ON REGULATORY PROTECTION

The three pillars of the General Agreement on Trade in Services (GATS) are the provisions on MFN treatment (Article II), national treatment (Article XVII), and market access (Article XVI). These valuable provisions seek, respectively, to prevent discrimination between trading partners,in favor of domestic providers, and the use of quantitative restrictions. Certain limitations of the key GATS disciplines are well recognized. For example, it is well known that the MFN obligation allowed for one-time exemptions, and that the national treatment and market access obligations apply only in sectors included in a World Trade Organization (WTO) Member's schedule, and there too can be subject to limitations. It is not, however, as well appreciated that neither these rules nor other supporting GATS provisions adequately limit national regulatory discretion in implementing policies, especially through the issuing of licenses.

MFN and national treatment cover in principle both de jure and de facto discrimination, that is, both explicitly different treatment and effectively different treatment.[1] However, virtually all the exemptions listed under the MFN obligation and limitations scheduled under the national treatment obligation pertain only to explicit discrimination. That WTO Members have not sought legal cover for de facto discriminatory practices does not imply that such practices do not exist. Rather Members are reluctant to unilaterally determine whether and where they discriminate in effect, and to confess to the existence of such discrimination in their schedules. The burden of identifying and establishing the existence of discrimination, therefore, falls on other interested parties, such as exporters and exporting countries.
Determining whether a measure is consistent with Articles II or XVII is a challenge. It hinges, first of all, on establishing whether the imported services are “like” each other. The wider the definition of “likeness,” the greater will be the set of measures that are inconsistent with Articles II and XVII. If a doctor is a doctor, a regulation which imposed greater qualification requirements on a doctor trained in country A than on a doctor trained in country B would violate Article II, or on a doctor trained abroad than on a domestic doctor would violate Article XVII. On the other hand, the narrower the definition of “likeness” the more measures will conform to Articles II and XVII. If a doctor trained in country A is not “like” a doctor trained in country B, then the treatment of the doctor trained in country A would have to be compared with the treatment of a doctor trained in a country with similar training standards, and the additional qualification requirement could then be found consistent with Article II. Crucially, the national treatment (Article XVII) and MFN (Article II) obligations would have limited force if likeness is in the eye of the regulator.

The market access (Article XVII) obligation differs from the other two provisions in that it prohibits only de jure quotas but not de facto quotas. So it is only to be expected that the schedules under Article XVII list only explicit quantitative restrictions. Crucially, a Member is free today to implicitly restrict the number of service providers, for example, by varying qualification standards—as the Japanese body responsible for regulating the accountancy profession reportedly used to do to limit the annual flow of qualified chartered accountants—or by imposing prohibitive entry fees—as the Zambian telecommunications ministry used to do to prevent foreign providers from establishing their own international gateways.

Whether there is de facto discrimination or a de facto quota depends entirely on how policy is implemented. The key mechanism for allowing entry in services is the license.[2] The license is defined broadly to cover any

1 The elaboration in Article XVII:2 and XVII:3 of the national treatment provision left no doubt that the term “treatment no less favorable” should be interpreted to mean not only de jure discrimination but also de facto discrimination. That there was no similar elaboration in the MFN provision created some doubt about its scope. But the Appellate Body in the bananas dispute upheld the Panel's conclusion that the provision prohibits both forms of discrimination, even though it differed on the basis for this conclusion and went further than the Panel in clearly stating that its conclusion was not limited to the case under consideration.

2 GATS Article XXVIII defines a “measure” to be “any measure by a Member, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form.” It is convenient to distinguish, as the GATS does, between “measures of general application” and other measures. Measures of general application include laws, regulations, and rules (which inhabit the GATS schedules) as well as standard administrative procedures. Other measures include decisions and administrative actions, which are one-off acts implementing measures of general application.

decisions or administrative actions, including authorizations or approvals, which allow a service provider to enter the market and provide a service. In this broad sense, virtually every service provider in virtually every country needs a license to operate—from an accountant and an architect to a bank and a builder. While licenses are almost always required, they are almost never issued in a non-discretionary manner. The limited evidence available from the World Bank Services Trade Restrictions Database suggests that licensing criteria are usually made public, reasons for denial are often provided, but the fulfilment of publicly stated criteria does not automatically lead to a license being issued (Figure 1).

Regulators across the world and across services sectors clearly enjoy significant latitude in making judgments of "likeness" in deciding whether and how to issue a license, as well as in determining the number of licenses they issue. This regulatory discretion imposes a cost on trade. For example, Table 1 has estimates of the "regulatory tax" paid by foreign professionals already licensed to practice in other jurisdictions in order in order to practice in the United States (US)—one of the more open economies in the world. This tax reflects the costs for professionals of taking tests of competence, requalification, retraining, and fulfilling other licensing requirements, such as working for a period of time in underserved areas. Some of this tax may be legitimate and necessary to ensure the desired quality of a service, but the problem is that there is at present no way of establishing whether that is indeed the case or whether some elements of the tax are in fact discriminatory.

FIGURE 1:

Transparency, Accountability, and Predictability

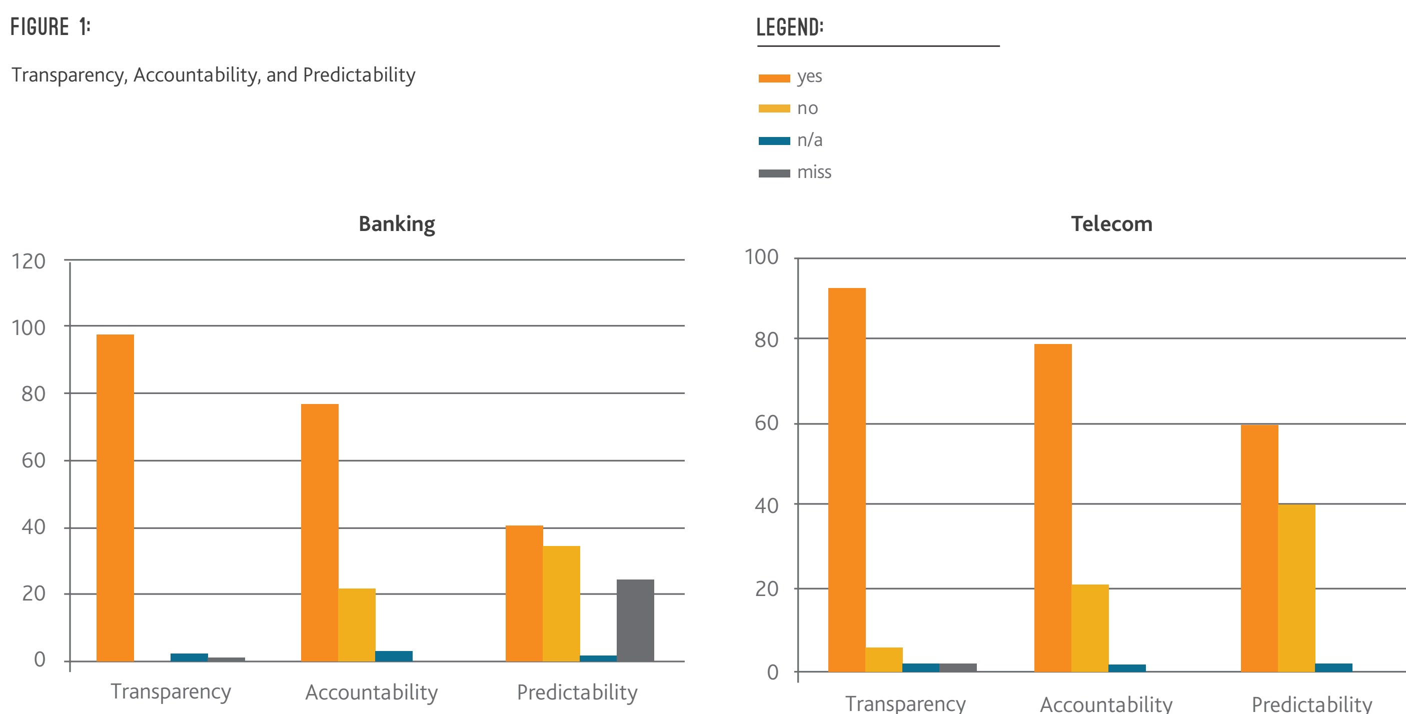

TABLE 1:

Foreign Professionals Pay a Large Regulatory Tax to Practice in the US

Source: Mattoo and Mishra (2006).

Profession	Number of Indian professionals coming to the US annually (average for the 1995-2000 period)	Visa, examination, and licensing fees paid per professional	Average income foregone per professional due to differential requirements	Total income/ fees paid or lost by Indian professionals due to regulations (US$ in million)
	(A)	(B)	(C)	(D)
Physicians and Surgeons	1092	$4,640	$100,000	114
Civil and Mechanical Engineers	683	$2,270	$60,000	43
Accountants	518	$5,600	$30,000	18
Architects	350	$3,030	$25,000	10
Total for all professionals	10234	$60,000-$75,000		614-768

The GATS is not blind to the corrosive power of discretionary licensing. Article VI on domestic regulation has already put in place certain disciplines. Thus Article VI:1 requires that in sectors where a Member has made specific commitments, all measures be administered in a "reasonable, objective and impartial manner." Article VI:2(a) mandates the institution of judicial, arbitral, or administrative tribunals for the objective and impartial review of administrative decisions and, where justified, appropriate remedies for them.[3] But recognizing the inadequacy of these restraints, Article VI:4 mandates negotiations to develop disciplines necessary to ensure that "qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services." But, as we know, these negotiations have only produced an outcome for the pilot exercise on accountancy, and those too remain in a legal limbo.[4]

In sum, notwithstanding these provisions, it is evident that the discretion retained by regulators creates scope for the implementation of de facto discrimination or quantitative restrictions through the issuing of licenses.

LIMITATIONS OF PROPOSED REGULATORY DISCPLINES

The proposed disciplines on domestic regulation, as reflected in the accountancy disciplines and WTO Members' submissions, have valuable elements. These elements include ensuring transparency of regulatory processes, including through requiring prior notice and scope for comment; and disciplines on licensing requirements and procedures by requiring that they be pre-established, publicly available, and objective.[5] But the proposed disciplines do not adequately solve existing problems with the implementation of key GATS disciplines and may create new problems.

First of all, the proposed disciplines do not resolve the MFN and national treatment conundrum identified above relating to the difficulty of establishing whether measures are de facto discriminatory. The problem is that new disciplines on domestic regulation under GATS Article VI:4 have been seen as additional to the disciplines contained under the MFN, market access, and national treatment provisions—that is, applying to the right-most segment in Figure 2. Thus, the "necessity test" is envisaged as analogous to the necessity test contained in the Agreements on Technical Barriers to Trade (TBT) and on the Application of Sanitary and Phytosanitary Measures (SPS), as a further requirement on measures that have already passed the discrimination test that they not be more burdensome than necessary to achieve a legitimate objective.

Such a necessity test is misplaced because the primary need is not for a national treatment-plus or an MFN-plus discipline, but to find a means of establishing whether regulatory requirements imposed on foreign services or service providers are discriminatory. That is, when a foreign doctor from country A is asked to undergo an examination and one from country B is asked to undergo an examination and three years of residency, is that inconsistent with MFN and/or national treatment? Denying the regulator any freedom to make a distinction is politically unsustainable; conceding to the regulator infinite freedom to make distinctions would make a mockery of GATS disciplines. The only reasonable way of making this determination is to ask some variant of the question—is the difference in treatment necessary?[6]

The incorporation of a necessity test for non-discriminatory measures (as envisaged in GATS Article VI:4 and the draft accountancy disciplines) could be seen as unduly intrusive. In situations where the level of attainment of an objective does not increase with the stringency of a measure, it is easy to establish that a less stringent measure would achieve the objective. But in most cases the level of attainment increases with stringency. The European Court of Justice could apply a proportionality test weighing the benefits of higher attainment against the costs in terms of lost trade, but the WTO cannot. In any case, countries currently seem unwilling to countenance rules targeting measures that do not discriminate in any way but are deemed to be too stringent.
Moreover, if such disciplines were incorporated into the GATS, the result could be an additional "hold back" problem. In the goods trade world, where national treatment is a general obligation, quotas are prohibited, and tariffs are bound, strict disciplines on technical barriers targeted the

3 There are also procedural disciplines regarding informing applicants about the status and decisions (Article VI:5), and establishing procedures to verify the competence of foreign professionals (Article V:6).

4 The decision to issue a license is in some ways analogous to the decision to issue a government procurement contract. In both cases, the challenge for international disciplines is to limit discretion, which is open to protectionist abuse. Therefore, certain provisions of the WTO's Government Procurement Agreement, particularly those relating to ex-ante and ex-post transparency, as well as the challenge procedures, are potentially relevant to services.

5 See, for example, the Disciplines on Domestic Regulation in the Accountancy Sector, which were adopted by the Council for Trade in Services on 14 Dec 1998.

6 Some might baulk at this idea because the General Agreement on Tariffs and Trade (GATT) jurisprudence has established that a necessity test cannot be read into the national treatment (or MFN) provisions. But Article XVII:3 may offer an acceptable route to a similar assessment when it notes that "formally identical or formally different treatment shall be considered to be less favorable if it modifies the conditions of competition in favor of services or services suppliers of the Member compared to the like services or service suppliers of another Member." Either way, the unavoidable question is whether difference in treatment is necessary, not whether a non-discriminatory measure is necessary.

main remaining source of impediments to trade without creating an incentive to retain protection. In services, where specific commitments do not yet cover all sectors or measures, premature stringency of regulatory disciplines that kick in when a country makes specific commitments could inhibit the willingness to make binding commitments even to provide market access and national treatment. Reaching for the first best of deep goods-like disciplines could thus make even the second best of across-the-board basic disciplines hard to attain.

Finally, neither existing nor proposed disciplines address the problem of "pure regulatory heterogeneity." The term "pure" is meant to signify differences that are not in any way attributable to protectionist or anti-competitive goals. Such heterogeneity arises when regulatory requirements differ across countries because of either differences in institutions (leading typically to "horizontal" differentiation, for example, in legal services) or differences in social preferences (leading to "vertical differentiation," for example, stringency of financial or privacy regulation). The result of pure regulatory heterogeneity is the segmentation of international markets in a way that cannot be remedied by imposing disciplines on importing countries.

REGULATORY COOPERATION AS A PRECONDITION FOR LIBERALIZATION

The basic case for regulatory cooperation arises from that regulatory heterogeneity segments international markets in a way that prevents the exploitation of economies of scale. This is illustrated in Figure 3 from De Bruijn et al. (2008). For example, since each East African country has its own regulatory requirements for services professionals, compliance costs cannot be spread out over provision of professional services in other East African countries but must be incurred separately in each market. De Bruijn et al. (2008) estimate that the European Union (EU) stock of foreign direct

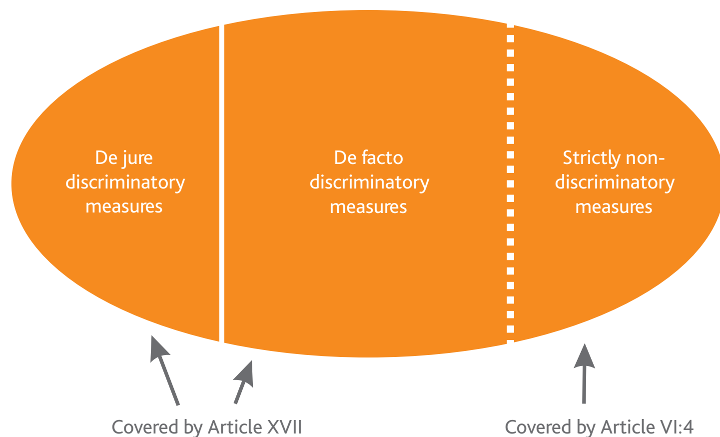

FIGURE 2:

Current View on Scope of GATS Disciplines

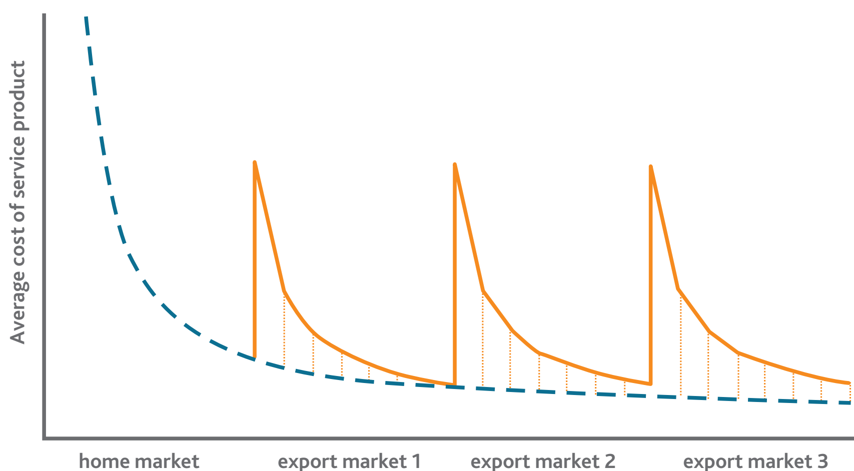

FIGURE 3:

Costs of Regulatory Heterogeneity and Gains from Regulatory Cooperation

LEGEND:

avg. costs in case of mutual recognition

avg. costs per export market in case of regulation heterogeneity

investment (FDI) could increase by 20–35 percent if regulatory heterogeneity was reduced as a result of a common services regulation directive.

Pure regulatory heterogeneity cannot be addressed by imposing traditional trade disciplines because the problem is not due to protectionism or anti-competitive intent. But there is nevertheless an economic cost of such heterogeneity because each country is independently choosing its regulations without taking into account the negative impact on foreign producers and hence on competition. Therefore, there are potential gains from international cooperation where each country trades off the benefits of maintaining different nationally optimal regulations against the benefits of integrating markets through some form of regulatory convergence.

REGULATORY EXTERNALITIES IN AN INSECURE WORLD

Even more fundamental is the problem of regulatory externalities arising when regulators in the jurisdiction of the service exporter do not take into account the consequences of market failure for consumers in the jurisdiction of the service importer. Such regulatory externalities matter profoundly in an insecure world. Today, security is a growing concern in multiple dimensions closely related to services trade.

- Financial internationalization and financial security
- Digital trade and informational security
- Labor mobility and security from crime and terrorism
- Demographic change and health and old-age security

The shared element in each of these examples is a regulatory or policy externality transmitted from one jurisdiction to another through services exports. The inadequacy of financial regulation in one country can affect consumers and financial stability in other countries to which its financial institutions export services. Weak data protection in a country that exports data-processing services can compromise the privacy of citizens of other countries. Imperfect policing and emigration checks in a country whose individuals travel abroad to provide consultancy services could undermine law and order in other countries. Poor regulation of hospitals and universities in one country can hurt the health and human capital of foreign citizens who visit for treatment or education.

Regulatory externalities exist in goods trade as well, but there is an important reason why regulatory cooperation is not just an "add on" in services but a precondition for further liberalization. In goods trade, a country could liberalize trade policy and still apply technical regulations at the border. The intangibility of services and the simultaneity of production and consumption make pre-consumption inspection and post-production regulation difficult. An inability to ensure compliance with desired regulations ex ante translates into a reluctance to liberalize.

Thus, in services, trade restrictions can become a second-best response to market imperfections. The first-best response is regulatory cooperation. Only when a country is assured that imported services are adequately regulated will it liberalize and give up the right to protect. But in what form is this reassurance to be secured?

EXPORTER COMMITMENTS?

Conventional trade negotiations and rule-making are primarily concerned with disciplining importers: tariffs are bound; quotas are prohibited or restrained; discrimination against imports and trading partners is prohibited or restrained; and there may be further disciplines on importing country product standards—for example, the requirement in goods that they must be "necessary" to achieve a legitimate objective. For the most part, trade rules do not concern themselves with exporter disciplines or commitments. The rare examples in goods include prohibitions or restraints on export subsidies, quotas, and agricultural assistance. In services, even these are missing.

This asymmetric structure of trade rules, which focus entirely on rules and commitments on importing countries and none (or very few) on exporting countries, does not create a natural home for regulatory cooperation. The result is an unwillingness on the part of importing countries to give up discretion.

SECURITY OF MARKET ACCESS VERSUS REGULATORY FLEXIBILITY

Apart from the discretion inherent in the implementation of policy discussed in Section 1, WTO Members take two routes to retaining regulatory discretion in services: either they make no commitments; or they make commitments in return for provisions granting exceptions, such as the Annex on Movement of Natural Persons, the prudential carve out in financial services, and exceptions under Article XIV for privacy. The Annex on Movement of Natural Persons states, "The Agreement shall not prevent a Member from applying measures to regulate the entry of natural persons … provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment." The Annex on Financial Services, in the so-called "prudential carve out," states, "Notwithstanding any other provisions of the Agreement, a Member shall not be prevented from taking measures for prudential reasons … Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Member's commitments or obligations under the Agreement." Finally, Article XIV on General Exceptions states, "Nothing in this Agreement shall be construed to prevent the adoption or enforcement by an Member of measures necessary to secure compliance with laws or regulations which are inconsistent with the provisions

of this Agreement including those relating to the protection of privacy of individuals in relation to the processing and dissemination of personal data."

These attempts to accommodate regulatory concerns strike an awkward and uneven balance between allowing regulatory freedom to purse certain objectives and preserving the value of market access commitments.

But it is far from clear how much security is offered to the regulator or the exporter by the coexistence of commitments and untested exceptions provisions. And one of the two will inevitably be disappointed by any specific interpretation. The key questions are: Can and should the appropriate balance between permissiveness and restraint be set by a WTO Panel? Or should the balance be struck by Members through a cooperative process, with more symmetric commitments by importing and exporting countries? And should this cooperative process be pursued bilaterally, regionally, or multilaterally?

WHAT DOES REGULATORY COOPERATION MEAN IN PRACTICE?

In some cases, regulatory cooperation could be far-reaching and lead to harmonization or mutual recognition, which would eliminate the costs of regulatory heterogeneity for firms and liberate them from the uncertainty of discretionary licensing. In other cases, regulatory cooperation could be valuable even if it only involves greater mutual understanding of how regulatory discretion in each jurisdiction will be exercised because that too would lend predictability to commitments.

Here are four examples that reflect recent developments and illustrate the heterogeneity of approaches to cooperation across modes of delivery and sectors. Trade in digital services, financial services, and labor mobility highlight issues arising in trade through cross-border delivery, commercial presence, and presence of natural persons, respectively, while competition policy is a cross-cutting issue.

Cooperation to ensure liberal trade in digital services and free data flows by addressing divergent standards of privacy

Governments are taking different approaches to regulating personal data collected by private enterprise.[7] The EU has implemented the world's most legally comprehensive data protection regime—the Data Privacy Directive (DPD) adopted in 1995—and plans to develop it further.[8] The EU approach highlights the challenges and limits of a regional approach to data privacy in a world of a global internet and cross-border data flows.

The DPD makes it illegal to transfer personal data outside the EU unless the European Commission has found that the third country receiving the personal data provides an adequate level of protection. In the absence of an adequacy decision, data can be transferred to a third country under so-called derogations, the main ones being consent of the data subject when the transfer is necessary for the performance of a contract between the data subject and the controller, or when it is necessary on important public interest grounds. The DPD also allows for a cross-border transfer pursuant to a contract between the controller and the processor that guarantees the same protection of the personal data as under the DPD. A global conglomerate can transfer data among its units where it has implemented binding corporate rules (BCRs) that also ensure data protection consistent with the DPD.

So far, outside Europe and British territories in Europe, only four countries (Argentina, Uruguay, Israel, and New Zealand) have been recognized as providing adequate levels of data protection.[9] In practice, this recognition has required the existence of a privacy regime equivalent to the EU. Such a standard may not be globally optimal for a number of reasons. The EU conception of privacy as a fundamental human right reflects its own history and cultural trajectory, which other countries might not share. Even where other countries consider privacy a human right, it can still be balanced against other values, such as free speech in ways that lead to different levels of privacy protection than in the EU. Critically, protecting privacy can have economic costs and countries at different stages of development are unlikely to strike the same balance between privacy protection and economic development goals.

The US-EU Safe Harbor Framework

The US-EU Safe Harbor Framework (SHF) was developed in response to the absence of a finding that the US provides an adequate level of data protection.[10] On 26 July 2000, the European Commission recognized the SHF privacy principles as providing adequate protection for the purposes of personal data transfers from the EU to approximately 3,000 companies in the US that have signed up to the safe harbor principles.

The SHF consists of seven principles that largely reflect the key elements of the EU DPD. The main ones are commitments to give European data subjects notice that a US entity is processing their data; to limit onward transfers of data to countries that also subscribe to the safe harbor principles or is

7 This section draws on Mattoo and Meltzer (2015).

8 As a "Directive," implementation of the DPD is left to EU member states, and they vary widely in their enforcement. The European Commission is seeking to update the DPD in the form of a regulation.

9 Canada and Australia have been recognized as adequate for the purposes of transferring passenger name records.

10 According to a 1999 opinion from the Article 29 Working Party, the US approach was seen as not providing adequate protection in all cases for personal data transferred from the EU.

the subject of an adequacy finding; to take reasonable steps to protect personal data from loss or misuse; to process personal data only for purposes of the organization that intends to use it; and to give European data subjects access to their personal information and the ability to correct, amend or delete inaccurate information; and a commitment to enforce the principles and give European data subjects access to affordable enforcement mechanisms.

A key difference between the SHF and the EU's DPD adequacy standards is that the former recognizes the self-regulatory approach with US government enforcement as an effective means of guaranteeing that personal data from the EU will be accorded privacy protection consistent with the data privacy principles agreed under the SHF. Under the SHF, US organizations can either join a self-regulatory privacy program that adheres to the safe harbor principles or self-certify (most common) to the Department of Commerce that they are complying with these principles. The US Department of Commerce reviews every SHF self-certification and annual recertification submission it receives from companies. The Federal Trade Commission (FTC) enforces the SHF against companies that self-certify as being in compliance.[11]

While it is widely acknowledged that the SHF has played a crucial role in allowing data flows between the EU and US, some concerns have been expressed about its operation and effectiveness. On the US side, the main concern is that it only applies to EU-US data transfers and therefore is not useful for companies who want to transfer data globally, that is, to establish a globally accessible database or a global human resources information system. The main EU concerns are about enforcement. This includes a trend for the FTC to rely on complaints before acting, instead of conducting independent verification of compliance. Limited coverage of the SHF also means that it does not apply to financial or telecommunications services as the FTC does not have jurisdiction over these industries. These concerns have led to the development of EU regulation that would address these concerns and potentially to the renegotiation of the SHF. In sum, the SHF is an example of remarkably effective, yet imperfect, and dynamic regulatory cooperation.

Cooperation to address heterogeneity in prudential regulation in financial services

More than in other sectors, the gains and costs of financial liberalization depend on the regulatory and supervisory framework. But in internationalized markets, it is not just regulation at home that matters, but also the quality and objectives of regulators in trading partners. If financial regulators in each jurisdiction are either not capable or not inclined to take into account the consequences of their actions in other jurisdictions, foreign entry may create risks, and anticipating those risks can lead to a reluctance to open markets.

There is already a long history of international cooperation on financial regulation. A central issue has been capital requirements, which specify the amount of loss-absorbing equity financial institutions must maintain. Even though the Basel III accord strengthened these requirements compared to those in Basel II, many countries think of the Basel III accord on capital as a floor, and are inclined to impose tougher capital requirements. In this respect, Basel III reflects a more general problem with international standards in services. In the few instances where they exist, they are viewed as necessary rather than sufficient conditions. Their fulfillment in the home jurisdiction does not guarantee unimpeded rights of entry and operation in other jurisdictions.

Consider the issues confronting even the relatively open US and EU financial markets as they negotiate the Transatlantic Trade and Investment Partnership (TTIP). After the crisis, a key element of the reconfiguration of the financial systems in the US under the Dodd-Frank legislation has involved limiting the leverage of banks and other financial institutions, imposing restrictions on proprietary trading, and developing resolution procedures for firms facing solvency. European financial institutions feel burdened by some of these developments; for example, new rules would end exemptions under which US subsidiaries of European banks such as Barclays and Deutsche Bank were able to operate with relatively little capital because their global parents were regarded as well capitalized.

The EU Council has sought to address both market access and regulatory issues within the TTIP, calling for a common framework that is "binding on all regulators and other competent authorities" and a "common framework for prudential regulation" (Johnson and Schott 2013: 2). In contrast, the US Trade Representative, Michael Froman, has expressed willingness to deal with market access issues in the TTIP but has declared "that nothing we do in a trade agreement should undermine the ability of regulators on both sides to regulate in the public interest". The US would prefer to pursue regulatory cooperation within existing fora (Johnson and Schott, 2013).[12] For example, the Federal Deposit Insurance Corporation (FDIC) and the Bank of England have agreed on how to deal with a situation in which a global megabank fails. Regardless of where and how regulatory cooperation takes place, both parties clearly recognize its importance in sustaining open markets.

Even within Europe, there is a growing tension between increasingly integrated markets and the absence of an integrated supervisory system. Consider the example of the European Free Trade Area (EFTA) market in which a "single passport" allows a bank in one EFTA country to establish branches in other member countries without being subject

11 To date, the FTC has brought ten safe harbor-related enforcement actions. It acts on referrals from EU data protection authorities, third-party private dispute resolution providers, and on its own.

12 These fora include the Basle Committee for Banking Supervision, the Financial Markets Regulatory Dialogue (US-EU), the International Organization of Securities Commissions, the International Association of Insurance Supervisors, the Financial Stability Board, and the Group of Twenty (G-20).

to effective local regulation. Under this provision, Iceland's Landsbanki established Icesave branches in the United Kingdom (UK) and the Netherlands. The failure of the bank in 2008 revealed that UK and Dutch deposits in the branches were not adequately covered by deposit insurance. The EFTA court eventually ruled that Iceland was not responsible for paying deposit insurance after the collapse. The systemic implications for cross-border banking are still being felt. More generally, even within Europe, there is a realization that integrating banking markets requires more work on the development of a resolution regime for failing cross-border banks, including bankruptcy and restructuring procedures.

Each of these issues is also relevant to trade in financial services involving developing countries, but a slightly different issue is particularly relevant in North-South relations. While it is generally held that the presence of foreign financial institutions has been a stabilizing force when financial crises originated in developing countries, the foreign presence may not have been an entirely benign influence during the recent crisis that originated in industrial countries. Haas (2014), in a review of the literature, shows how the crisis was propagated eastward by Western banks reducing the credit supply in emerging Europe (faster than domestic banks did).[13] However, it is notable that foreign banks that took part in the Vienna Initiative, a public-private coordination mechanism to guarantee macroeconomic stability in emerging Europe, were somewhat more stable lenders.[14] The initiative specifically sought to limit the negative fallout from nation-based uncoordinated policy responses to the global crisis and to avoid a massive and sudden deleveraging by cross-border bank groups in emerging Europe. Even though the initiative was put in place during the crisis, the existence of such a mechanism does provide a guarantee against "financial nationalism" by exporting countries during crises ("British loans for British firms"), which can have a chilling effect on liberalization.

It is evident that some form of cooperation to coordinate national regulation is necessary to maintain open financial markets. This cooperation need not take place within the context of trade negotiations but could take place in other fora. Whether these parallel efforts need to result in legally binding agreements will depend on how much trust there is in regulatory institutions in different countries. It will also depend on how much need there is for regulators to respond to different and changing financial conditions in different countries. Multilaterally, there is certainly need for greater coordination between, on the one hand, the International Monetary Fund (IMF) and the WTO, which help guarantee states' financial openness, and, on the other hand, institutions such as the Bank for International Settlements and the Financial Stability Forum (with expanded membership), which deal with financial regulation.

Cooperation between host and source countries on labor mobility through bilateral labor agreements

Progress in mode 4 negotiations has become almost a precondition for more meaningful developing country participation in the process of reciprocal market opening. And it is proving extremely difficult for a number of countries to make any "concessions" in this area. How can we make mode 4 a positive outcome rather than a millstone for services negotiations? First of all, Members need to recognize that simply asserting that mode 4 is about trade in services and not about migration cannot dispel deep-rooted fears raised by the entry of foreign providers. These fears have to be acknowledged and addressed. One way forward may be to take a more cooperative and less antagonistic approach to mode 4, drawing on the experience of a few relatively successful bilateral and regional agreements (Saez 2013).

The inclusion of labor mobility in the framework of a multilateral trade agreement implies that obligations are assumed by host countries alone to provide market access on an MFN basis regardless of conditions in source countries. In contrast, the assumption of obligations by source countries is also a key element of some bilateral labor agreements that have to a limited extent facilitated mobility of workers, particularly the unskilled, (for example, between Spain and Ecuador, Canada and the Caribbean, and Germany and Eastern Europe). Source country obligations include pre-movement screening and selection, accepting and facilitating return, and commitments to combat illegal migration. In effect, cooperation by the source country can help address security concerns, ensure temporary stays, and prevent illegal labor flows in a way that the host is incapable of accomplishing alone. All of this constitutes a service for which the host country may be willing to pay by allowing increased access.

In the current GATS framework, when a country makes a market access commitment, it is obliged to grant a fixed level of access every year in the future regardless of domestic economic conditions. In contrast, bilateral labor agreements allow host countries to vary the level of access depending on the state of the domestic economy and market cycles. One example is the bilateral agreement between Germany and certain Eastern European countries, under which the quota on temporary migrants increased (decreased) by 5 percent for every one percentage point decrease (increase) in the level of unemployment. It may be desirable to consider GATS commitments along these lines, which would allow necessary flexibility, albeit in a transparent, predictable, and objectively verifiable manner, and would be a big improvement over the opaque economic needs tests that infest GATS schedules.

Can these elements be incorporated in a multilateral agreement? One possibility is that host countries commit

13 Crisis transmission to Latin America was more severe in countries where foreign banks were lending across borders rather than through subsidiaries. Subsidiaries that were funded locally instead of through the international wholesale markets or through their parent banks were particularly stable credit sources.

14 The Vienna Initiative was launched at the height of the first wave of the global financial crisis in January 2009. It brought together all the relevant public and private sector stakeholders of EU-based cross-border banks active in emerging Europe; see http://vienna-initiative.com/.

under the GATS to allow access to any source country that fulfills certain pre-specified conditions—along the lines of mutual recognition agreements (MRAs) in other areas. Even if these conditions were unilaterally specified and compliance with them determined unilaterally, it would still be a huge improvement over the arbitrariness and lack of transparency in existing visa schemes. Eventually, it would be desirable to negotiate these conditions (and even establish a mechanism to certify their fulfillment) multilaterally rather than in an unequal, non-transparent, and potentially labor-diverting bilateral context.

Cooperation on Pro-competitive Regulation

Anti-competitive practices that fall outside the jurisdiction of national competition law may be important in sectors such as maritime, air transport, and communication services. The current GATS provision in this area (Article IX) provides only for information exchange and consultation. Meaningful international cooperation on the enforcement of competition policy is needed to reassure countries with limited enforcement capacity that the gains from liberalization will not be appropriated by international cartels.

The problem is not hypothetical. Fines of around US$1 billion or more are being imposed by the UK's Financial Conduct Authority, the US's Commodity Futures Trading Commission, and Swiss regulators on the world's biggest banks—Barclays, JPMorgan Chase, Royal Bank of Scotland, and Citigroup—for manipulating foreign exchange markets (Financial Times 2015). The rigging apparently took place through information sharing and coordinated trading. In 2013, the European Commission fined eight international financial institutions, including Barclays, Deutsche bank, RBS, and Societe Generale, a total of €1.71 billion for participating in illegal cartels in markets for financial derivatives covering the European Economic Area (EEA). In 2012, large banks also struck deals resulting in large fines but helping them to avoid prosecution for manipulation of the Libor benchmark interest rate.

In 2010, the European Commission fined 11 air cargo carriers a total of nearly €1 billion for operating a worldwide cartel, which affected cargo services within the European Economic area (EEA).[15] The carriers coordinated their action on surcharges for fuel and security without discounts over a six-year period. In 2013, the European Commission opened formal anti-trust proceedings against 14 of the world's biggest container shipping firms in Europe and Asia. The Commission was concerned that the public announcement of new prices enabled companies to signal future price intentions to each other, which led to higher prices for container liner shipping transport services on routes to and from Europe.

If anti-competitive practices are being carried out in the EU and US markets despite their powerful competition authorities, the question arises about the practices of these multinational banks, airlines, and shipping lines in other countries. Could it be the case that actions by the EU and US authorities provide a global public service by acting against cartels? Unfortunately, there are limits to both when and how action is taken. If anti-competitive effects are only felt outside their jurisdiction, there is no basis for action. A notable aspect of the European Commission's fines imposed on the air cargo carriers was that all carriers were granted a 50 percent reduction on sales between the EEA and third countries to take into account that part of the harm of the cartel on these routes fell outside the EEA.

International cooperation could help overcome the limitations of national bodies, especially in small countries, but it is not easy to accomplish. For example, South Africa is a significant investor across southern Africa and is one of the biggest foreign investors in Zambia. For the most part, South African investment has been welcome, but there are also concerns that South African companies may abuse their market power to the detriment of local producers and consumers. The Zambia Competition Commission (ZCC) is not able to deal effectively with accusations against South African companies of anti-competitive behavior in Zambia because it often does not have the jurisdiction to deal with companies that operate in the country but are not locally incorporated, or for some other reason do not come under Zambian competition law. It does not have the ability to enforce its decisions even where it does have jurisdiction to issue judgments. It is often unable to obtain the information necessary to investigate the activities of a foreign company from the home jurisdiction of that company; and despite its competent and motivated staff, it lacks the resources to conduct the detailed empirical investigations required to effectively address allegations of anti-competitive behavior.

One possibility would be for Zambia to condition opening its market to South African firms on a commitment by the South African authorities to investigate anti-competitive behavior by South African companies in Zambia, where the local authorities are not competent to do so. In principle, it would be in South Africa's interest to provide such reassurance. However, Section 3 of South Africa's Competition Act states that it "applies to all economic activity, within, or having an effect within, the Republic" (own italics). Still, the South African Act does allow for limited cooperation in particular instances. South Africa's agencies can help foreign agencies investigate behavior that has a South African as well as regional impact; share information, but only if the companies concerned agree to this; and through technical assistance.

In the longer term, serious consideration should be given to the formation of a regional competition agency to which national competition agencies could forbear jurisdiction in particular circumstances, in a fashion similar to the European Commission within Europe. For example, to save costs, in May 2000, St Lucia, Dominica, Grenada, St Vincent and the

15 Among the 11 airlines fined were Air Canada, Air France-KLM, British Airways, Cathay Pacific, Cargolux, Japan Airlines, LAN Chile, Martinair, SAS, Singapore Airlines and Qantas. Lufthansa (and its subsidiary Swiss) received full immunity from fines under the Commission's leniency program as it was the first to provide information about the cartel.

Grenadines, and St Kitts and Nevis set up, with World Bank support, the Eastern Caribbean Telecommunications Authority (ECTEL), the first regional telecommunications authority in the world. Although the member countries retained their sovereign power over licensing and regulation, the ECTEL provides technical expertise, advice, and support for national regulations. Apart from the economies of scale in establishing a common regulator, there are at least three other advantages. It promotes the development of harmonized and transparent regulation in the region, allows for a greater degree of independence (and hence credibility) in regulatory advice, and enhances bargaining power in negotiations with incumbents and potential entrants. There is evidence that the creation of the ECTEL, along with other reforms, prompted a decline in the price of a daytime call to the US between 24 and 42 percent in these countries.

More generally, the US and the EU that own and control many services multinationals could at least begin by ending the exemption of collusive practices whose effects are felt outside their jurisdiction from the scope of their competition law. More ambitious, but perhaps not very realistic, it may even be desirable to create a right for foreign consumers to challenge anti-competitive practices by services firms in the national courts of countries whose citizens own or control these firms—giving consumers rights analogous to those producers enjoy under the WTO rules on intellectual property and government procurement.

REGULATORY COOPERATION CREATES A RISK OF EXCLUSION

Regulatory cooperation will inevitably be among a sub-set of countries—at least initially. That may naturally lead to patterns of trade based on mutual trust rather than comparative advantage. Data, investment, and people may travel between jurisdictions that have been able to reassure each other about their standards, rather than to other non-conforming jurisdictions. Of course, in some cases, such as the enforcement of competition policy, regulatory cooperation can generate positive externalities for third countries and be a global public good. But, even in this case, as we saw above, there is a risk that regulators primarily address anti-competitive behavior that has an adverse impact within their own jurisdictions rather than in third countries.

TRADE DIVERSION THROUGH HARMONIZATION AND MUTUAL RECOGNITION?

Where standards of any sort are involved—prudential, privacy, professional, safety—regulatory cooperation involves either harmonization or mutual recognition. Both can benefit and hurt third countries. Harmonization creates a common standard that is the same for service providers all over the world, who can all reap economies of scale (analogous to a customs union). But if the harmonized standard is more stringent than some of the original standards, since costs of compliance vary, those less equipped to meet the higher standard could suffer. Mutual recognition grants all service providers the opportunity to fulfill the least stringent requirement—and is potentially even more liberalizing than harmonization. But a downside could be the imposition of restrictive rules of origin—if the benefits of MRAs are not available to service providers in other countries, they must continue to fulfill separate requirements and are disadvantaged.

WATCHING OUT FOR THE EXCLUDED

GATS Article VII on MRAs dealing with recognition attempts to strike a difficult balance. On the one hand, it is permissive and allows space for regulatory cooperation. Thus, Article VII:1 recognizes that "a member may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country" as part of an agreement or autonomously.

The remaining paragraphs of Article VII seek to ensure that this freedom is not abused. Article VII:2 requires a Member who enters into an MRA to afford adequate opportunity to other interested Members to negotiate their accession to such an agreement or to negotiate comparable ones. More importantly, Article VII:3 stipulates that a Member must not grant recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing, or certification of services suppliers, or a disguised restriction on trade in services.[16] Recognition, unilateral or through an MRA, amounts to an acceptance of likeness vis-à-vis certain suppliers, and it also defines a standard of treatment vis-à-vis other suppliers and provides others with a potentially valuable foothold.

What is the empirical significance of MRAs? It is possible to provide a preliminary answer thanks to the transparency requirement created by Article VII:4—Members must inform the Council for Trade in Services about existing MRAs and

16 It is also relevant that Article VII:5 states that "wherever appropriate, recognition should be based on multilaterally agreed criteria" and requires Members to work towards the establishment and adoption of such criteria.

of opening negotiations on any future ones. Until sometime ago, 21 notifications had been received under Article VII:4, of which ten were from Latin American countries, four from the US, three from Switzerland, and one each from the European Commission, Australia, Norway, and Macau. Not surprisingly, all but one of these pertain to the recognition of educational degrees and professional qualifications obtained abroad. The only other MRA notified is in the domain of financial services, owing to reciprocal recognition of the proof of solvency between the EU and Switzerland.

Significantly, mutual recognition of qualifications is also mentioned as an element of 11 regional integration agreements, notified under GATS Article V:7(a). These agreements include the one establishing the EU, agreements between the EU and neighboring countries, and the Closer Economic Relations Treaty between Australia and New Zealand, among others. This raises the question of whether MRAs concluded in the context of regional integration agreements are still subject to the disciplines in Article VII:2 and 3. One view may be that Article V provides an exception to the fundamental non-discrimination obligation in Article II and therefore also an exemption to similar obligations contained in other GATS provisions, including Article VII. Alternatively, it could be argued that all MRAs, regardless of whether they are concluded by parties to a regional integration agreement or other Members, are covered by Article VII and their disciplines cannot be circumvented by appealing to Article V.

The tendency of Members to notify MRAs under the "closed" Article V rather than "open" Article VII may reflect an attempt to share these gains on a limited reciprocal basis by avoiding the obligation to extend recognition more widely. Ideally, participants in MRAs would agree not to impose restrictive rules of origin and extend their benefits to all providers that have met comparable standards. Where participants consider harmonization, there would be a stronger presumption in favor of international standards where they exist; if they do not, countries should favor the less stringent of the original standards unless there is credible evidence that it would not help meet the relevant regulatory objective. Finally, it may be worth considering mechanisms for multilateralizing MRAs along the lines discussed in the section on labor mobility to reduce the costs of individual third-country initiatives.

DILEMMA FOR THE EXCLUDED: THE TYRANNY OF HARMONIZATION

As countries strive to become candidates for recognition agreements by improving their domestic standards, they may confront a difficult choice if standards are not "separable." Separable standards are destination specific. For example, the Philippines may train some nurses who are going to work in the US or Japan to a higher (or different) standard than those who are going to work domestically. Non-separable standards are those that for technological or, more usually, legal reasons are origin specific and must be identical for all destinations. Examples are economy-wide prudential regulations in financial and professional services, and the "national adequacy findings" stipulated in the EU's privacy directive, which is backed by the power to cut off data flows to countries that the EU judges not to have adequate data protection rules

The efforts by the Philippines (and, to an extent, India) to respond to the EU privacy directive illustrate the dilemma for developing countries. On the one hand, if they choose not to enact laws deemed adequate, they could be shut off from participation in the large EU market. In the absence of such laws and given the weakness of local legal and regulatory systems, it might be difficult for private firms in developing countries to emulate US firms such as Microsoft and credibly commit to meet the required high standards. On the other hand, if they do enact stringent laws, it is unlikely that they could be made specific to trade with particular jurisdictions, and so the result could be an economy-wide increase in the costs of doing business. For instance, if the private sector estimates generated in the US are to be believed, information sharing saves the customers of 90 financial institutions (accounting for 30 percent of industry revenues), US$17 billion a year ($195 per average customer household) and 320 million hours annually (four hours per average customer household) (Glassman 2000).[17] In fact, the Philippines initially enacted national privacy legislation to ensure continued access to the EU data processing market. But the result was that many Philippines-based US firms found it difficult/costly to operate in the Philippines and suspended investment plans. Whereupon the Philippines government was obliged to reverse course. India too has apparently been struggling to find the right balance.

This is not to suggest that there might not be good reasons to adopt high standards. However, the desired level of standards may differ across countries, and if trade is made conditional on the existence of "comparable" laws, then there might be a socially costly "race to the top.[18] For example, in financial services, universal "know your customer" laws enforced through blacklisting threats for non-complying jurisdictions have forced many developing countries to adopt standards that deny access

17 It is of course true that reporting of personal credit histories is critical to consumer credit, and even in theory excessively strict privacy laws could create significant asymmetries of information and affect the efficiency of markets (Kitchenman 1999).

18 The EU directive does offer other options. Thus, the recourse to "binding corporate rules" implies horizontal application at the level of the firm, and non-separable standards within firms across jurisdictions. The consequence may be that a firm with a significant actual or potential stake in the EU market must accept a loss of relative competitiveness across other markets. Finally, the "standard or model contract" option offers in principle the scope to narrow application to specific contracts for specific jurisdictions. But the fixed and variable costs of such contracts (which may also require a presence in the EU market) may be significant.

to financial services to poor households that cannot meet the burdensome documentation requirements. In general, it would therefore be desirable to allow recognition of standards in a way that allows separability, that is, the standard has to be met only by services and services suppliers destined for the relevant market. Developing countries would then not be obliged to trade off access to markets against access to services for their own citizens.

SOME FINAL OBSERVATIONS

Finally, here are a few observations anticipating some concerns.

There is significant heterogeneity across services sectors, as the four examples presented in this paper reveal. The scope and form of regulatory cooperation will differ across services sectors depending on the nature of the regulatory externality. There will also be differences across countries within the same services sector. We already have significant regulatory cooperation in certain areas (for example, in financial services) but not in other areas (for example, labor mobility). In some cases, regulatory concerns may be a smoke-screen for vested interests. But there is all the more reason to address legitimate concerns so the dubious can be laid bare. In that sense, cooperation may not be sufficient to deliver liberalization, but it is necessary.

Regulatory cooperation does not mean freezing national regulation and depriving regulators of the flexibility to respond to changes in markets and technology. Regulatory cooperation will be a dynamic process because regulation is dynamic. Thus, the regulations emanating from Dodd-Frank are still being written four years after law was passed. The SHF served an important purpose, but will now have to be renegotiated to take changes in EU privacy concerns into account. Regulatory cooperation could also take the novel form of a trade facilitation agreement in services to address the procedural aspects of regulation.

Regulatory cooperation has in some cases been more inclusive of developing countries (for example, Basel III) but less so in other cases (for example, competition policy). Even though regulatory assistance to developing countries has been significant, it has been ad hoc rather than systematic. Most relevant in the present context, regulatory cooperation has rarely been synchronized with trade negotiations. This dichotomous approach internationally is mirrored by the lack of coherence nationally, reflected in the lack of coordination between ministries of commerce and sectoral ministries in the diagnosis of regulatory inadequacies and the sequencing of remedial action and liberalization.

Supply chains diminish the importance of regulatory impediments to trade, but regulatory impediments can still influence the distribution of gains within them. The fragmentation of services into tasks has meant that it is no longer necessary for services exporters to jump through all the regulatory hoops and incur all the regulatory costs, such as those estimated in Table 1. Thus, an architect in Colombia can today produce a draft design or an accountant in India a draft tax return and send it digitally to their locally recognized counterparts in the US, who will ensure and certify conformity with local standards. However, if there are restrictions on entry to architecture and accountancy services in the US, then US-licensed professionals can extract a rent for their services and grab a larger than competitive share of the total value of the service. Even if there are no restrictions on entry, a similar problem arises if the US service providers do not really have a comparative advantage in providing the final certification services. Thus, regulatory cooperation that makes all stages of services production contestable remains relevant in a world of global supply chains.

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