

Trade in Services: A Holistic Solution to New-Found Issues in Trade Law?

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Trade, Law & Development: A Year in Review

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TRADE, LAW & DEVELOPMENT: A YEAR IN REVIEW

I. INTRODUCTION

Every year the Editorial Team undertakes a two-pronged editorial journey. First, we publish a General Issue in the winter, which contains articles across an assortment of topics in the field of international trade and economic law; and second, we publish a Special Issue, which covers a specific area of law and is focused on delving into a nuanced study of its various aspects. In this regard, we are pleased to bring to you the twelfth edition of our Special Issue which is dedicated to Trade in Services.

There are several unique challenges to compiling a Special Issue that we as a Board face to ensure the quality of publication that we strive for. At the end of the day, the Journal aims to meet its commitment of providing contemporary academic literature that contributes innovatively to the legal debates in its respective area of law. Selecting the theme, we realised, is an underrated, but pivotal part of this process. The Journal therefore follows a uniquely democratic process for the adoption of this theme. We begin by inviting individual proposals from each Editor on the Board. It is an exercise that takes into consideration the involvement and vision of each member on the Board. After all the proposals are made, we conduct a transparent voting process where each Editor votes for a particular theme and cites reasons for their choice. The criteria that the Editors take into considerations are relevancy of the theme, availability of authors, the scope of the theme and lastly the freshness of the idea. Once the votes are tabulated, a theme is finally selected. Pursuant to discussions spanning over two weeks, around twenty-five proposals and an intense vote later, the Board selected '*Trade in Services: A Holistic Solution to New Found Issues in Trade Law?*' as the theme for this year. We pride ourselves on this process as it ensures the participation and involvement of the entire editorial team and ensures that we settle on the best theme possible.

Trade in Services was an area of law that the whole Board was excited to work on. What is noteworthy is also how relevant this theme became as we were publishing this Issue due to the breakout of the COVID-19 pandemic. This pandemic infused a new aspect to the international service market. The Board, at the outset, hopes that its readers are keeping well and would like to express its gratitude and respect for those providing health services worldwide. As enthralled as we are to present to you the result of our hard work, we are also deeply aware of how human beings

all around the world are ultimately connected to each other in their pursuit of well-being and prosperity. On that note, dear readers, we present to you: Issue 12.1!

II. CONTENTS OF THE SPECIAL ISSUE

The contents of this Issue have been entirely solicited by the Board. We reached out to over two hundred prominent authors in the field and are pleased to have curated this Issue with the collaboration of some of the most reputed Authors on the subject. At the time of voting on the theme, we were soliciting articles for our previous issue and in that course, Professor Rudolf Adlung agreed to write for General Issue 11.2 and Professor Petros Mavroidis agreed to write for any following issue that we may publish. Coincidentally, Professor Adlung submitted a paper on trade in services, one which he graciously agreed to defer publication of when we explained to him the concept and theme for this Issue. Further, Professor Mavroidis too was more than willing to write for this Issue. We set out hoping to receive acceptances from some of the best names in trade in services writing for us, not realising that we would be publishing an Issue with Professors Adlung and Mavroidis headlining it for us.

This issue begins with an Editorial, where we analyse how the current trade in services regime may be suitable to redress the global problem of unemployment. We analyse whether the current regime and the General Agreement on Trade in Services (GATS) is sufficient to redress new age issues in employment and how the pandemic has led to greater levels of unemployment at present, while also foreshadowing a rather grim future. We also assess whether digital trade and e-commerce in services has led to an increase in opportunities, while also assessing the downside to it, i.e. lack of jobs due to increased automated processes. We further assess how the Trade in Services Agreement and regional trade agreements could aid in streamlining new issues in services, while concluding that the GATS, although in existence since 1995 and rather flexible, needs updating to reflect the realities of our times. We were assisted by Sukanya Viswanathan and Swikruti Nayak in the editing process.

Professor Adlung sets out to explain why the largely flexible GATS may be a sleeping beauty, although it has been in existence since 1995. He argues that it has always been overshadowed by the General Agreement on Tariffs and Trade and a lack of GATS application has led to uncertainty in law, compliance issues, and uncertainties with Bilateral Investment Treaties, Plurilateral Trade Agreements, Economic Integration under Article V and other conflicting legal commitments. He suggests that these issues may be caused by multiplicity of regional agreements; a lack of willingness, perhaps even hostility, to dwell further on the GATS, coordination issues; et al., but concludes that there is a need for sweeping reforms

in the plurilateral system. The editorial team for this article comprised Sarthak Singla, Tania Gupta and Rashmi John.

Professor Mavroidis and his team write on the current debate between France and the United States of America (USA) over taxation of digital services. They write about a contention that they believe has the potential to spark another trade war between the European Union nations and the USA. They analyse the right of World Trade Organisation (WTO) Members to tax services that provided digitally by companies located and incorporated in other Member States. This article provides an in-depth study of the legal obligations of WTO Members and their right to tax revenues that arise out of transactions in their jurisdictions. This paper presents an exemplary understanding of the service market that allows people to transact and trade across international borders. It also evaluates the legal obligations under the GATS regime and provides various alternatives of the kind of cooperative solution that would have to be arrived at to resolve the issue of whether or not a tax burden can be imposed on these digital services in the user jurisdiction. The editorial team working with the authors comprised Ayushi Singh, Sahil Verma and Neerali Nanda.

We are also extremely grateful to Dr. Andreas Maurer of the WTO for contributing to this Issue. Dr. Maurer delves into the practical assessment of trade in services and lays down the tools for the same. He explains succinctly, *inter alia*, the WTO Integrated-Trade Intelligence Portal system in cooperation with the World Bank, the Balance of Payments and International Investment Position Manual by the United Nations Conference on Trade and Development and International Trade Centre, the Balanced Trade in Services Statistics in cooperation with the Organization for Economic Cooperation and Development and Trade in Services by Mode of Supply, to show how trade in services is affected by multiple factors and how its flow can be estimated and regulated. This article proves the dynamism in trade in services and concludes by stating that dynamism in the globe, considering the ever-changing ecosystem we live in, cannot be truly captured if we ignore trade in services anymore. This article was edited by Apoorva Singh, Abilash Viswanathan and Aastha Asthana.

Professor Markus Krajewski has written our next piece, which discusses the impact of the liberalisation of trade on human rights. Professor Krajewski brings forth some dormant questions in trade in services in the context of the current developments. The role of trade in the protection of human rights has been brought up before but has only become a source of vigorous debate in recent times. The author revisits the impact of various multilateral and plurilateral trade agreements and the extent to which they limit the negative impact of trade on human rights. The author focuses the onus of trade to ensure ethical practices and the protection of human rights as service chains run from one territory to another.

This article astutely balances the economic benefits of trade with the social responsibilities that rests on the WTO Members. The editorial team assisting Professor Krajewski comprised Gautami Govindrajan, Anjali Sasikumar and Aniketa Jain.

The advent of telecommunication and broadband services has opened yet another avenue in the field of trade in services. This is precisely what Dr. Hildegunn Kyvik Nordås explores in her paper, with a specific focus on the Indian telecommunication sector. She argues that telecommunication has become a means of transport for services export especially due to the widespread use of computers in countries like India caused by the sweeping reforms in the telecom sector in the 1990s. She uses mathematical estimates derived by using the gravity model to emphasise the need of exacerbated reforms in India's foreign trade policies, particularly in services trade. The editorial team assisting Dr. Nordas included Radhika Parthasarathy, Amogh Pareek and Suvam Kumar.

In a similar vein, with the advancement in digital trade, blockchain has now grown in importance, despite the trepidation shown by States in its application. Dr. Weiwei Zhang delves into the intricacies of blockchain and the Distributed Ledger Technology (DLT) that enables services trade by removing the need for auxiliary services, encouraging inclusion of marginalised individuals in trade, and allowing for exclusivity for suppliers in the distributed ledger. She argues that the GATS is an ideal multilateral agreement to regulate such trade as its broad scope has the ability to include DLT services within it and can also ensure that domestic regulations on DLTs are brought in conformity with the GATS. Dr. Zhang was assisted by Sahil Verma, Anjali Sasikumar and Suvam Kumar.

Further, Dr. Mira Burri, assisted by the editorial team comprising Apoorva Singh, Abhinav Srivastav and Shlok Patwa, presents to us an article on the regulation of trade in services in a data driven economy. Trade in Services has been confronted with what the author describes as the 'digital challenge'. The fluidity of this sector has resulted in the transfer of data and information of providers and consumers across boundaries of the Member States. Amidst the growing concerns of privacy, and the changing domestic regulatory regimes this article provides a cutting-edge observation on the sector. The Author adroitly studies the regime and offers her observations and contemporary legal arguments on how the policy and law can protect all stakeholders. The article is a very pertinent and interesting read.

Our previous Special Issue focused on Trade Facilitation and the Trade Facilitation Agreement. Dr. Pralok Gupta and Ms. Sunayna Sasmal offer their perspective on a similar agreement, namely, Trade Facilitation in Services (TFS), which has yet to see the light of day. India has been a strong proponent of TFS and the authors expound upon the importance of such a proposal despite understanding that

roadblocks against it are caused due to the recognition of the principles under TFS in various regional agreements, thus maybe rendering the proposal otiose. They conclude by saying that although these principles have been accepted in a fragmented manner, uniformity is the need of the hour, and that can only be achieved by a multilateral agreement. Editorial assistance was provided by Ayushi Singh, Amogh Pareek and Neerali Nanda.

The next article is written by Ben Shepherd, who was assisted by an editorial team comprising Gautami Govindrajan, Sukanya Viswanathan and Swikruti Nayak. His article is focused on providing a new perspective on the services trade restrictiveness index. The premise of his article tries to evolve the method by which the restrictiveness of a trade policy is measured. The author provides a novel algorithm that can quantify trade costs and the restrictiveness index of trade policies. He compares his approach to the OECD approach and argues that this alternative methodology would provide a more accurate assessment of the global impact of services trade. This article is mathematically revolutionary in its approach to study trade policy and its effect on the economics of the services environment.

Our final article has been authored by Ms. Sunanda Tewari and former Editor-in-Chief of the Journal, Mr. Prakhar Bhardwaj. This article is a seminal piece on India's trade policies with respect to the movement of natural persons under Mode 4 of the GATS. The paper maps India's policies which are dedicated to improving the export of services. The trajectory of India's international stance is discussed by the authors from the GATS 2000 Proposal all the way up to its recent trade agreements. The authors adeptly assess the ability of these agreements to harness India's services potential and bolster export of services. This paper is thus a holistic work that articulates India's journey as one of the most relevant players in the international services market. The editorial team working on this paper was composed of Tania Gupta, Sukanya Viswanathan and Rashmi John.

We conclude this Issue by including a note by Dr. Anirudh Shingal, who writes about Aid for Trade (AfT) in Services. He argues that AfT in services allows for enhancement of trade, however, a one size fits all approach must be avoided. He also argues that more AfT attention needs to be diverted towards LDCs and landlocked countries that find it tougher to integrate in international markets. He also suggests that the ongoing pandemic will lead to more suffering and thus, more attention must be given to AfT in the services sector. This note was edited by Ayushi Singh, Abilash Viswanathan and Aastha Asthana.

III. ACKNOWLEDGMENTS AND CONCLUSION

It is safe to say that the year of 2020 is one that will find space in history books in the future. The challenges that this year has thrown our way has made us delve

into pathways otherwise unexplored. The success of this Issue is entirely owed to our extremely dedicated and hardworking Board of Editors. In March 2020, it was decided that our University would be locked down owing to COVID-19 for a period of two weeks, which at that time, although foreboding, was a short period post which we hoped to return to *status quo*. However, that was not meant to be as it was then announced that our country would be under a lockdown, which has (at the time of writing this) extended into the month of July, in some parts of the country. A large part of our editorial work is covered by way of interactions and periodic discussions, which have now ported into social media and video calls (as in most parts of the world). Despite these uncertain situations and extremely strict deadlines, our Editors have portrayed superior editing skills and have ensured the publication of an Issue that we are truly proud of. This Issue is majorly dedicated to our Board of Editors, who have become more than just an editorial board to us over the years.

We are grateful to the Vice Chancellor of our University, Hon'ble Dr. Prof. Poonam Saxena, and the Registrar of our University, Mr. Sohan Lal Sharma, for encouraging academic discourse and scholastic success in the University. We thank them for their administrative and logistical support, for promoting us and for indulging our requests. We would, next, like to thank, Dr. Rosmy Joan, the faculty-in-charge of our Journal who has supported the Board through the toughest of situations and has ensured that we do not falter in our ways. Due to her concerted efforts, the Board has been granted financial and logistical support. A large reason of this Board's success can rightfully be credited to Dr. Joan, who has always given us the freedom to make our own choices and trusted us with them. We would also like to thank Mr. Vinod D, the Head Librarian at the University who has made it possible for us to ensure accountability of our subscriptions, for managing our database of subscribers and graciously accepting panic ridden calls even during these times to ensure that our database is in order.

Over the course of this Issue, we had hoped to expand our ambit by organising multiple lecture series at the University. The first of these was held in February 2020 by our founding Editor-in-Chief, Mr. Shashank Kumar, who very graciously, made time to visit the University to deliver a lecture on careers in international law and to speak about his experience with the same. The next lecture was to be held at the University in March 2020, over the span of two weeks, by Dr. V.S. Seshadri, Ambassador of India to Myanmar and Slovenia, on the evolution of free trade agreements and the Indian and Korean perspectives to the same. However, owing to the pandemic, this was not meant to be. We, however, thank him for agreeing to conduct this series, and hope that the next Editorial Board may proceed with the same.

We have also, over the last year, sought to increase diversity in our Journal's process. While the Journal earlier received larger contributions from American or European authors, this due to a limited solicitation process by previous Boards, we have aimed to attract more contributions from authors across the world, with a keen focus on India. We are also pleased to note that a large part of this issue's contributions come from women, who are authorities in the field and give us a lot to aspire to.

This Board prides itself on maintaining close contact with editors of the past and the strong relationships that have been developed over the course of these years. In this regard, we thank our consulting editors, Mr. Shashank Kumar, Mr. Ali Amerjee and Mr. Manu Sanan for their assistance, guidance and for being our voices of reason.

Long-time readers of our Journal are aware of the consistent trouble that our website has posed for us. We are immensely proud to announce that it is now running smoothly and has a newer, modified interface that has made it bug-free and more user friendly. We would be remiss if we did not thank Mr. Rwik Kamilya for his hard work and are grateful to him for having taken the time to do this for us. We would also be negligent if we did not thank Mr. Abilash Viswanathan, an Associate Editor on our Board, for ensuring that this process was seen to fruition and also, for working on the intricacies of the same.

It has been a rewarding year for us as Editors-in-Chief. We are thankful for having this opportunity and for the faith reposed in us by our Board of Editors, our Consulting Editors, Dr. Joan, and the University. We only hope we have done enough to keep this Journal on the high pedestal it is so deserving of and have done everyone proud in this process. This Journal has taught us valuable life lessons and we are honoured to have been the captains of this ship. Although extremely sad to be saying goodbye, we are also equally proud and happy to pass on the mantel of Editors-in-Chief to Ms. Gautami Govindrajan (who has been a tremendous Managing Editor on our Board) and Mr. Amogh Pareek (an equally hardworking Associate Editor on our Board). We are also pleased to announce that Ms. Ayushi Singh, Mr. Sahil Verma and Mr. Abilash Viswanathan have been appointed as Senior Content Editor, Managing Editor and Technical Editor, respectively, for Issues 12.2 and 13.1. We have full faith that these Editors will carry on the legacy of the Journal to the best of their abilities and believe that the incoming Board has the potential to be the best this Journal may have seen!

On that note, we say goodbye and sign off on a wonderful year!

Ipsiata Gupta & Radhika Parthasarathy,
July 2020.