

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

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TRADE IN SERVICES: A TOOL TO REDRESS UNEMPLOYMENT?

IPSIATA GUPTA* & RADHIKA PARTHASARATHY†

The General Agreement on Trade in Services (GATS) has been in existence since 1995. However, its application has been far more restrictive than that of the General Agreement on Tariffs and Trade. This is primarily due to the lower scale of services trade in comparison to that of goods trade in the world. Of late, services trade has seen a tremendous spurt due to digital growth, higher exports and imports, growth of micro, small, and medium enterprises and more recently, due to the COVID-19 crisis. It is interesting to note how the GATS is a malleable framework, encompassing within it, the ability to redress most if not all issues in global trade. Does it also solve the problem of unemployment? Can it also create more employment? These are some interesting questions that have now arisen. This paper takes stock of these questions and seeks to find answers within the GATS framework, while also proposing alternatives.

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I. INTRODUCTION

Increase in world trade has led to an increase of trade in associated services, particularly in sectors such as transport, communication, and technology. At an individual level, this may be the result of globalisation of thought and problem-solving, where people are embracing foreign environments and providing services to its markets. This would imply that individuals around the world have a keener understanding of foreign markets and look for opportunities across borders for their own prosperity. At the government level, this move is incentivised by the need for trained professionals to infuse progress in national systems. Trade policies are motivated by the give-and-take of accessibility to the skill and labour markets from one country to another. These policies play a role in global value chains, the costs of running businesses, and the education and training of professionals in every country. At the multilateral level, it is therefore in the interest of Member States to negotiate terms on which the trade of services may take place across borders.

Pursuant to the negotiations during the Uruguay Round, the World Trade Organization (WTO) brought the General Agreement on Trade in Services (GATS) to the fore. The objective of this agreement was to ensure certainty and credibility in the international service market by ensuring fair and equitable treatment of all participants, stimulating economic activity through binding policies, and promoting trade and development through progressive liberalisation. The layered interests of the individual, the State and the world at large have been made feasible by several factors, such as recent advancements in technology and transportation, rising consumer demand, and the changing global demographics. The service sector plays an integral role when we talk about development. Services are indispensable to infrastructure and manufacturing sectors, where efficient and competitive services are ‘catalytic to the expansion of global value chains.’¹ In value added terms, thus, services today account for about 50% of world trade.² It would therefore be impossible today to imagine global development without taking into account the service sector.

¹ U. N. Conference on Trade & Dev., Trade in Services and Employment, UNCTAD/DITC/TNCD/2018/1 (July 27, 2018), https://unctad.org/en/PublicationsLibrary/ditctncd2018d1_en.pdf [hereinafter UNCTAD Report].

² *Services Trade*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/serv_e/serv_e.htm.

In this light, the authors seek to redress another grave issue that has arisen in world trade – that of unemployment. In Part II, we delve into the complexities of the relationship between trade and employment. Thereafter, in Part III, we see how and if services trade has an impact on unemployment rates, and in Part IV, we seek to analyse how the Trade in Services Agreement (TiSA) and trade agreements over the years address the issue of employment. We then seek to conclude this paper in Part V.

II. WHY UNEMPLOYMENT?

The World Employment and Social Outlook Trends, 2020 report published by the United Nations International Labour Organization (ILO) forecasts that global unemployment will increase by 2.5 million this year.³ It suggests that the predominant reason for this would be the lack of available jobs to meet the needs of the new entrants.⁴ Additional statistics provided by the report reveal that the total number of people in the world who are currently unemployed is about 188 million; 165 million people do not have adequate paid work, while 120 million people are either not seeking employment or do not have access to job markets.⁵ It is evident that a problem that affects 470 million individuals requires an effective solution. With increasing complexities of the global services market, economists have long debated the impact of trade on employment. Several political campaigns have been led based on trade policies that would either use trade liberalisation or protectionism to increase jobs in the domestic markets of the Member States. For example, critics of the North American Free Trade Agreement (NAFTA) have argued that the lack of any provisions to regulate trade in the four thousand-page text of the agreement has caused the loss of employment.⁶ Alternatively, the United States Trade Representative also notes that every billion exports in trade and service supports 4500-6000 jobs in its market.⁷

³ *Global unemployment projected to rise by around 2.5 million in 2020: UN report*, THE ECONOMIC TIMES (Jan. 21, 2020), <https://economictimes.indiatimes.com/news/international/world-news/global-unemployment-projected-to-rise-by-around-2-5-million-in-2020-un-report/articleshow/73480520.cms?from=mdr>.

⁴ Int'l. Labour Org., *World Employment and Social Outlook: Trends 2020 Report* (Jan. 20, 2020), https://www.ilo.org/global/research/global-reports/weso/2020/WCMS_734455/lang-en/index.htm.

⁵ *Id.*

⁶ Carl Davidson & Steven J. Matusz, *International Trade and Labor Markets: Theory, Evidence, and Policy Implications* (W.E. Upjohn Institute for Employment Research, 2004).

⁷ *Trade Agreement and Jobs*, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE (Oct. 03, 2011), <https://ustr.gov/about-us/policy-offices/press-office/factsheets/2011/october/trade-agreements-and-jobs>.

There have been several economic studies that have attempted to understand the relationship between trade and employment. In their 2009 study, Rajan, Mitra, and Dutt collect data from 170 countries and they analyse it using two alternative models – Ricardian and Heckscher-Ohlin – of trade and unemployment.⁸ We consider this study because its database covers both developing and developed nations and puts them through the lens of established models of economic analysis. Under the Ricardian Model, the comparative advantage between countries is based on the relative technological differences, while under the Heckscher-Ohlin Model, comparative advantage is based on differences in factor proportions. Their conclusion, based on empirical evidence, states that according to the Ricardian model, it is protectionism that leads to unemployment. This model considers protectionist policies as they are applied to employment laws, civil liberties, trade unions, and the size of the labour force.

The Heckscher-Ohlin Model goes a step further to test whether the impact of trade policies on unemployment is conditional on whether the country is labour-abundant or capital-abundant. This model too, brings the authors to the same conclusion that protectionism is not a solution to unemployment, i.e., a closed service-market would not increase employment. A United Nations Conference on Trade and Development (UNCTAD) report recently observed that service exports can be used to achieve higher growth and employment by using development policies.⁹ In its 2019 report, the WTO provides case studies that show that trade in services has had a small albeit positive impact on employment and wage. The Organisation for Economic Co-operation and Development's (OCED) Trade in Employment (TiM) Database reports that services exports increased jobs by 40% in the United States of America (USA). Increased service trade is also known to contribute to several facets of development such as education, welfare, and income.

III. TRADE IN SERVICES: A HOLISTIC SOLUTION TO REDRESSING UNEMPLOYMENT?

The Marrakesh Agreement in its Preamble states that the WTO aims to achieve “higher living standards, full employment and sustainable development.”¹⁰ The advent of a WTO-regulated trading regime has resulted in the opening of markets across its Members. The WTO believes that open economies result in job creation

⁸ Pushan Dutt et al., *International Trade and Unemployment: Theory and Cross-National Evidence*, 78(1) J. INT'L. ECON. 32 (2009).

⁹ UNCTAD Report, *supra* note 1 at 28.

¹⁰ Marrakesh Agreement Establishing the World Trade Organization, Preamble, Apr. 14, 1994, 1857 U.N.T.S. 154.

due to their fast and steady economic growth.¹¹ Collateral reasons for the increase in employment opportunities are experienced at several levels where companies wish to increase the efficiency and productivity of their global value chains through employment. The WTO has also adeptly responded to the criticism of trade leading to job destruction by encouraging governments to maintain effective social programmes to help the workers.

When dealing with services trade under the WTO legal regime, the primary text to be referred to is the GATS. The GATS is holistic in nature because it covers all service sectors. There are, however, two exceptions to which the GATS does not apply. *First*, Article I(3) of the GATS excludes “services supplied in the exercise of governmental authority” from its ambit.¹² The rationale behind such exclusion is that these services are non-commercial in nature. Thus, no Member State is encumbered by international trade obligations when it comes to sectors such as education, health, and social services, among others. *Second*, the Annex on Air Transport Services excludes air traffic rights and the services that are directly associated with these rights. The GATS covers four mode of supply of services between Member States.¹³ The first mode deals with cross-border supply, and its role in employment has always been diverse. The journey began with businesses outsourcing units to labour-abundant countries like India and China. The advent of digital transactions has made this process more diverse. The second mode is consumption abroad, which refers to services provided in sectors such as tourism and healthcare. In this mode, the consumer moves to a Member State to obtain a service. The third mode of supply that is controlled by the GATS is commercial presence, which creates jobs as several companies focus on building their international presence. The last mode of supply is the presence of natural persons, which involves the physical movement of persons who supply services. The GATS also provides general obligations. Article II ensures Most-Favoured Nation treatment subject to exemptions agreed to at the time of accession or under Article IX:3 of the GATS. According to the Trade in Services by Mode of Supply (TISMOS) database, GATS trade has expanded by an average of 5.4% per year since 2005.¹⁴

¹¹ *The WTO can ... stimulate economic growth and employment*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/whatis_e/10thi_e/10thi03_e.htm [hereinafter WTO & Economic Growth].

¹² General Agreement on Trade in Services, art. I(3), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183 [hereinafter GATS].

¹³ *Id.* at art. I:2.

¹⁴ WORLD TRADE ORG., WORLD TRADE REPORT 2019: THE FUTURE OF SERVICES TRADE (Oct. 7, 2019) at 22, https://www.wto.org/english/res_e/booksp_e/00_wtr19_e.pdf [hereinafter World Trade Report].

The WTO is also committed to achieving the 2030 Agenda for Sustainable Development Goals (SDGs) and believes that the creation of jobs is an aspect of poverty reduction.¹⁵ Developing countries have increased their share of global services trade to 25% of world service exports and 34.4% of world service imports in 2017, up by more than ten percentage points since 2005.¹⁶ The WTO has constantly engaged with the trade regime to identify how services can be used to generate more employment. In its 2019 report on the future of trade in services, the WTO notes that services export supports a large number of jobs.¹⁷ It also notes that trade in services has, however, been unable to improve the level and structures of employment.¹⁸

Notably, the WTO has seen some success in increasing employment and improving its conditions. In the Sub-Saharan region of Africa, those working in export-oriented companies collect a 34% wage premium over the average wage.¹⁹ This premium also exists in developed countries, at 6% in the USA and 10-20% in Europe.²⁰ In the information and communications technology sector, developing countries such as Malaysia, Mauritius, and Egypt have achieved high levels of employment that are attributable to international trade.²¹ Developed countries such as Finland, Sweden and Ireland have followed a similar approach, leading to economic growth and new job opportunities.²²

At the Eighth Ministerial Conference in 2011, WTO Members adopted a waiver that allowed preferential treatment for services and service suppliers originating from Least Developed Countries (LDC).²³ More recently, in 2019, the WTO launched the Standards and Trade Development Facility (STDF), which is dedicated to enhancing trade policies in lieu of the United Nations SDGs. This initiative does not only improve the statistic of employment, but also tries to evolve the standard of living and the quality of employment in the world. It has led to oilseed farmers in Myanmar receiving certifications to trade safely, Cameroon Penja pepper traders having safe production and export facilities, and cocoa

¹⁵ *Mainstreaming trade to attain the Sustainable Development Goals*, WORLD TRADE ORG. (2018), https://www.wto.org/english/res_e/publications_e/sdg_e.htm.

¹⁶ World Trade Report, *supra* note 14 at 7.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ WTO & Economic Growth, *supra* note 11.

²⁰ *Id.*

²¹ *Id.*

²² *Services and Goods Exports from the Nordics: Strongholds and profiles of exporting enterprises*, (Nordic Council of Ministers, TemaNord 2106:555, 2016), <https://norden.diva-portal.org/smash/get/diva2:1047303/FULLTEXT01.pdf>.

²³ *WTO members review preferences granted to LDCs' service suppliers*, WORLD TRADE ORG. (Oct. 30, 2019), https://www.wto.org/english/news_e/news19_e/serv_30oct19_e.htm.

growers in Columbia and Ecuador meeting international labour and wage standards.²⁴ Thus, the STDF (established under the Aid for Trade agenda) is constantly seeking to improve livelihoods by investing in safe trade.

Despite these efforts, WTO measures seem tokenistic when confronted with the behemoth issue of unemployment. The trading platform is largely restricted by Member States wishing to remain terse on service policies. From the perspective of the Member States, the concerns are two-fold: on the one hand there is a need to balance the impact of trade on domestic jobs, and on the other, there is a need to establish a security framework that regulates the exchange of services. Member States would have to create a regulatory framework and support structures to be able to optimise their employment levels. One may also argue that we may never be able to completely map the impact of trade on employment. Especially in terms of the employment in allied markets and improved wage and employment conditions, we notice that international trade creates a standard or market practice. This practice organically seeps into domestic labour models and changes them. To that extent, the role of trade and exchange will always be critical to the labour market.

The WTO has significantly contributed to two employment-related agendas – one is with respect to making trade in services gender inclusive across the world, and the other is with respect to identifying and promoting micro, small, and medium enterprises (MSMEs), which are directly linked to improving employment qualitatively and quantitatively. To the WTO's credit, these agendas have enabled the service industry to be able to provide for a larger audience and has helped governments focus on pointed issues whose improvement would redress unemployment.

A. Gender Diversity in Trade in Services

It is no secret that women are under-represented in the most traded service sectors all around the world. Several Members States, assisted by the Asian Development Bank, recently launched discussions on leveraging trade to support women's economic empowerment.²⁵ It is believed that trade in services may be able to reduce the economic inequalities in services trade between men and women. The

²⁴ STANDARDS & TRADE DEV. FACILITY, STDF ANNUAL REPORT 2019 (2019), https://standardsfacility.org/sites/default/files/Annual_Report_2019.pdf [hereinafter STDF Report].

²⁵ ASIAN DEV. BANK, LEVERAGING TRADE FOR WOMEN'S ECONOMIC EMPOWERMENT IN THE PACIFIC (May, 2019), <https://www.adb.org/sites/default/files/publication/500106/leveraging-trade-womens-empowerment.pdf>.

question of gender diversity in matters of service and employment is linked to development. In 2018, statistics show that in developed countries, 87% of working women were employed in services.²⁶ This figure stood at 28% in LDCs.²⁷ The same may also be illustrated by the table provided below:

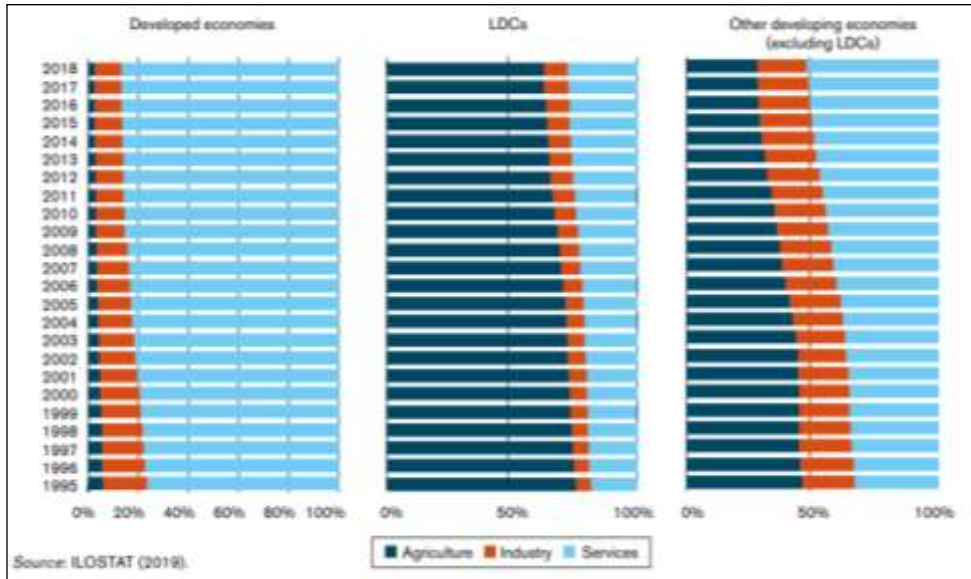


Figure 1: Positive Correlation Between Female Employment and Economic Development (1995-2018).

*Source: ILOSTAT (2019)*²⁸

Trade in services has brought meaningful change to the gender-related aspects of trade and employment. For example, in India, while awareness about gender inclusivity is on a rise, there is a very long journey that is yet to be made. Out of the employment created by USD 0.1 million worth of exports in popular sectors such as communication, 35% is occupied by women. An STDF initiative in Cambodia, Lao PDR and Vietnam has resulted in the creation of jobs for seasonal women workers in the peppercorn industry.²⁹

²⁶ World Trade Report, *supra* note 14 at 39.

²⁷ *Id.*

²⁸ Int'l. Labour Org., World Employment Social Outlook: Trends 2019 (2019), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_670542.pdf.

²⁹ STDF Report, *supra* note 24 at 24.

Improving the participation of women in trade is relevant because they represent half the potential workforce.³⁰ Further, it is important to have a targeted response to women's participation to offset the structural drawbacks that women face (including but not limited to less access to education and resources).³¹ The WTO also strives to improve gender equality within itself, where currently 54% of its staff is comprised of women.³² Gender has also been an important aspect of the Aid for Trade initiative since its inception, and the Aid for Trade Task Force recommendations from 2006 also refer to this mission. The Joint Declaration on Trade and Women's Economic Empowerment launched at the Buenos Aires WTO Ministerial Conference in 2017 identified aid for trade as an instrument to analyse, design, and implement more gender-responsive trade policies.³³ In its 2019 Aid for Trade report, the WTO noted the following:

There is widespread agreement that women's economic empowerment is one of the key drivers of sustainable development. Donors have been increasing their attention to gender dimensions in aid for trade. Activities include technical studies or project design that specifically focus on incorporating a gender dimensions in the particular area or activity. However, short-term donor programmes may prove insufficient to bring about meaningful policy changes or to sustain women's economic activities. One approach could include encouraging more awareness raising and training to design gender sensitive investments. This guidance would address two SDGs – Goal 5 which focuses on unpaid care and domestic work through the provision of public services and infrastructure and Goal 8 which promotes women to be engaged in productive employment.³⁴

³⁰ Sébastien Miroudot et al., *Trade in Intermediate Goods and Services*, (OECD Trade Policy Papers No. 93, TAD/TC/WP(2009)1/FINAL, Nov. 3, 2009), <https://www.oecd-ilibrary.org/docserver/5kmlcxtldk8r-en.pdf?expires=1593258996&id=id&accname=guest&checksum=9B1F3E4B4C0333DE81B9DCD4EC8A10EB>.

³¹ ORG. ECON. COOPERATION & DEV. ET. AL., SEIZING THE BENEFITS OF TRADE FOR EMPLOYMENT AND GROWTH (Nov. 12, 2010), https://www.wto.org/english/news_e/news10_e/oecd_ilo_wb_wto_report_e.pdf.

³² WORLD TRADE ORG., WOMEN AND THE WTO: GENDER STATISTICS (1995-2016), https://www.wto.org/english/news_e/news17_e/gender_stats_march2017_e.pdf.

³³ Sèna Kimm Gnangnon, *Aid for Trade and Employment in Developing Countries: An Empirical Evidence*, 33(1) LABOUR 77 (2018).

³⁴ WORLD TRADE ORG. & ORG. ECON. COOPERATION & DEV., AID FOR TRADE AT A GLANCE 2019: ECONOMIC DIVERSIFICATION AND EMPOWERMENT (2019), https://www.wto.org/english/res_e/booksp_e/aid4trade19_e.pdf [hereinafter Aid for Trade Report].

There are several examples that one may cite to show that the world has come a long way in this sphere, however, there is a longer journey ahead. Primal aspects that are overlooked by the WTO begin to manifest after employment – these are issues such as the gender wage gap, sensitisation programmes, and standards on questions of maternity and paternity leave, which can be better clarified. Additionally, the thrust of gender diversity has moved beyond merely establishing a fair environment for men and women, and has expanded to also create an inclusive space for other gender identities, such as homosexuals and transgenders, among others. It may be argued that these aspects fall beyond the scope of the WTO, however, as the bastion of global trade, the WTO plays an indispensable role in determining what a healthy trade environment looks like. Question may arise as to how this relates to unemployment. Here, it must be noted that in developing countries and LDCs, certain biases not only restrict access to job opportunities, but also discourage employment by creating a discriminatory environment. Creating gender-conscious policies benefits companies and Member States by allowing them to tap into a larger workforce and also be able to compete in a socially conscious world.³⁵ The WTO, in fact, is at a pedestal to ensure that such discriminatory policies may be done away with, thereby increasing employment in such economies.

B. Increasing Employment through MSMEs

One of the ways in which employment can be fostered is through the developmental policies associated with MSMEs, which have been known to increase employment across several sectors.³⁶ This would spur a multifaceted and inclusive growth trend because the MSMEs too are in need of human resources.³⁷ With the expanding global value chains, goods and services have become increasingly integrated and there are several opportunities for MSMEs to provide services as links in the chain.³⁸ The need to have decision makers with local knowledge and the ability to adapt to ground level situations has created a need of

³⁵ U. N. Conference on Trade & Dev., Trade and Gender: Opportunities and Challenges for Developing Countries, UNCTAD/EDM/2004/2 (2004), https://unctad.org/en/Docs/edm20042_en.pdf.

³⁶ Gemechu Ayana Aga et al., *SMEs, Age, and Jobs: A Review of the Literature, Metrics and Evidence*, (World Bank Grp. Policy Research Working Paper No. 7493, 2015).

³⁷ Ali Parry & Chelsea Markowitz, *SMEs in the services sector – A new pathway to development in the LDCs?*, BUSINESS LIVE (Oct. 31, 2016), <https://www.businesslive.co.za/opinion/2016-10-31-smes-in-the-services-sector--a-new-path-to-develop-least-developed-countries/>.

³⁸ Sonja Grater et al., *MSMES and services trade: A pathway to inclusive growth in developing economies?*, in WORLD TRADE ORG., WORLD TRADE REPORT 2019: THE FUTURE OF SERVICES TRADE (Oct. 07, 2019), https://www.wto.org/english/res_e/booksp_e/00_wtr19_e.pdf.

small-scale services businesses.³⁹ Resultantly, we live in a world where MSMEs account for 60% of total employment.⁴⁰ According to the 2016 World Trade Report, MSMEs contributed to 35% of the Gross Domestic Product (GDP) in developed countries, and 50% in developing countries, and thus played a critical role in preserving jobs.

Economic empowerment has been perceived as a priority for several developing countries such as Uganda, El Salvador, the Central African Republic etc.⁴¹ For small nations like Samoa, Kazakhstan, Maldives, Nepal, and Senegal, MSMEs play a major role in employment, supporting almost 99.8% of the economy in some cases.⁴² Access to finance is one of the main issues in the context of the promotion of MSMEs. An instance of this is evinced in the Maldives and to address this challenge, particularly the requirement of high securities, the government established a small and medium enterprises (SME) bank in February, 2019 to focus on SME financing and development.⁴³ Further, Kazakhstan considers access to finance catalytic for the sustainability of MSMEs.⁴⁴ Access to finance has also been identified as a channel to empower marginalised groups by facilitating their participation in regional and international trade in states like Uganda.⁴⁵ The WTO promotes these initiatives by providing policy assistance to developing countries that wish to garner support for their MSMEs.⁴⁶

The WTO also makes suggestions to countries on how to navigate economic exigencies. In fact, on June 03, 2020, the WTO assessed the unprecedented circumstances of the COVID-19 global pandemic. Per the WTO, the impact on

³⁹ Asad Ata, *The Role of SMEs in Asia's Economic Growth*, SME FINANCE FORUM (2019), <https://www.smefinanceforum.org/post/the-role-of-smes-in-asias-economic-growth>.

⁴⁰ *WTO report examines impact of COVID-19 pandemic on small businesses*, WORLD TRADE ORG. (June 03, 2020), https://www.wto.org/english/news_e/news20_e/msmes_03jun20_e.htm [hereinafter COVID-19 & Small Businesses].

⁴¹ Aid for Trade Report, *supra* note 34.

⁴² *Id.* at 25.

⁴³ *SME Development*, MINISTRY OF ECON. DEV., REPUBLIC OF MALDIVES, <https://www.trade.gov.mv/page/sme-development>.

⁴⁴ Alper Aras, *Small and Medium Enterprise Financing*, U. N. ECON. & SOC. COMM. FOR ASIA & PACIFIC, (27 Apr., 2017), https://www.unescap.org/sites/default/files/S6_SMEs-Financing.pdf.

⁴⁵ U. N. Dept. Econ. & Soc. Aff., *Achieving Gender Equality, Women's Empowerment and Strengthening Development Cooperation: Dialogues at the Economic and Social Council* (2010), [https://www.un.org/en/ecosoc/docs/pdfs/10-50143_\(e\)_\(desa\)dialogues_ecosoc_achieving_gender_equality_women_empowerment.pdf](https://www.un.org/en/ecosoc/docs/pdfs/10-50143_(e)_(desa)dialogues_ecosoc_achieving_gender_equality_women_empowerment.pdf).

⁴⁶ Martin Roy, *The contribution of services trade policies to connectivity in the context of aid for trade*, (World Trade Org. Working Paper No. 2017/12, Sept. 13, 2019), <https://doi.org/10.30875/88d8a23d-en>.

employment and services, especially in the case of MSMEs, can be inferred in two ways. *First*, their limited financial resources and borrowing capacity make it difficult for them to sustain employment at a time when their revenue is restricted. *Second*, the social distancing and transport disruptions have also created a cash crunch that has made it difficult for them to perform their requisite functions.⁴⁷ The WTO note on this subject advises governments to provide stimuli in the form state loans, wage subsidies, and tax payment deferrals to support these MSMEs and their employees.⁴⁸ Other impacts of the pandemic will be discussed later in the paper. The WTO has, therefore, attempted to support the service-related sector to protect and encourage employment. We are yet to notice how developed WTO Members may contribute to these initiatives, or how countries can come up with co-operative measures to enhance these efforts. Currently, the support to MSMEs is largely domestic; there is little or no global understanding on exploiting this area to solve the global issue of employment. The authors look forward to how the WTO may harness this sector at a multilateral level to alleviate unemployment.

C. The COVID-19 Outbreak and its Impact on Employment

In late 2019, the first strains of the SARS-CoV-2 disease, now known as the novel coronavirus, (COVID-19) were detected in Wuhan, China.⁴⁹ What began as a regulated spread has now become a global pandemic and has been declared as such by the World Health Organisation.⁵⁰ As it stands, most countries in world are following a total lockdown, a regulated lockdown, or have implemented mandatory stay at home orders, prime examples being India, the United Kingdom and New Zealand. The long duration of these lockdowns has no doubt had a severe impact on the economy. In fact, the WTO has noted that world trade is expected to fall between 13-32% in 2020 due to a lack of normal trade activities.⁵¹ While some of these restrictions have been lifted, partially or wholly, it is interesting to note how trade in services was perceived during these times and why the WTO thinks that services trade may be most affected directly.⁵²

⁴⁷ COVID-19 & Small Businesses, *supra* note 40.

⁴⁸ *Helping MSMEs Navigate the COVID-19 Crisis*, WORLD TRADE ORG., (June 03, 2020), https://www.wto.org/english/tratop_e/covid19_e/msmes_report_e.pdf.

⁴⁹ Chaolin Huang et al., *Clinical features of patients infected with 2019 novel coronavirus in Wuban, China*, 395 (10223) LANCET 497 (2020).

⁵⁰ *WHO Director-General's opening remarks at the media briefing on COVID-19*, WORLD HEALTH ORG. (Mar. 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

⁵¹ *Trade set to plunge as COVID-19 pandemic upends global economy*, WORLD TRADE ORG. (Apr. 08, 2020).

⁵² *Id.*

Services trade has long since included travel, distribution services, cross-border movement of persons, etc and amounts for 40% of global employment.⁵³ Thus, supply by way of Modes 2 and 3 have been affected severely. It has become apparent that that service sectors have taken a massive hit due to the pandemic and it is safe to assume that the overall growth rate in 2020, vis-à-vis in 2019 and earlier, will be much lesser.

The pandemic has not only led to a downturn in global trade but has also led to widespread unemployment that could be the worst ever faced in history. For instance, in India, the Centre for Monitoring Indian Economy found that in the month of April alone, twenty-seven million youth lost their jobs,⁵⁴ and statistically, the unemployment rate shot up from under 7% in the pre-pandemic era to 27.1% by May.⁵⁵ In fact, the ILO has predicted that a number equivalent to 305 million full-time jobs may be victim to the after-effects of COVID-19.⁵⁶ Scarily enough, the World Economic Forum predicts that the USA's overall unemployment rates now may be more than that of the Great Depression.⁵⁷ The UNCTAD has also forecasted a predicted loss of USD 1 trillion to the global economy.⁵⁸ Despite these numbers, a small silver ray is in the service sector that boomed, with e-commerce and information technology reaching new heights.

E-commerce has seen resounding growth amid the pandemic. Unemployment in the services sector, as reported by the WTO, has been caused largely by impossibility of proximity between suppliers and consumers.⁵⁹ Thus, most governments have encouraged the sale of essential goods and services by way of e-

⁵³ World Trade Report, *supra* note 14 at 7.

⁵⁴ Yogima Seth Sharma, *27 million youth in age group of 20-30 years lost jobs in April: CMIE*, THE ECON. TIMES (Mar. 13, 2020), <https://economictimes.indiatimes.com/news/economy/indicators/unemployment-rate-dips-to-23-97-data-from-cmie-shows/articleshow/75689370.cms?from=mdr>.

⁵⁵ *India's unemployment rate rises to 27.11% amid COVID-19 crisis: CMIE*, THE HINDU (May 05, 2020), <https://www.thehindu.com/business/indias-unemployment-rate-rises-to-2711-amid-covid-19-crisis-cmie/article31511006.ece>.

⁵⁶ Harry Kretchmer, *How coronavirus has hit employment in G7 economies*, WORLD ECON. FORUM (May 13, 2020), <https://www.weforum.org/agenda/2020/05/coronavirus-unemployment-jobs-work-impact-g7-pandemic/>.

⁵⁷ Nouriel Roubini, *This is what the economic fallout from coronavirus could look like*, WORLD ECON. FORUM (Apr. 06, 2020), <https://www.weforum.org/agenda/2020/04/depression-global-economy-coronavirus>.

⁵⁸ *This is how much the coronavirus will cost the world's economy, according to the UN*, WORLD ECON. FORUM (Mar. 17, 2020), <https://www.weforum.org/agenda/2020/03/coronavirus-covid-19-cost-economy-2020-un-trade-economics-pandemic>.

⁵⁹ *Trade in Services in the Context of COVID-19*, WORLD TRADE ORG. (May 28, 2020), https://www.wto.org/english/tratop_e/covid19_e/services_report_e.pdf.

commerce websites. Examples closer to home include Big Basket and Dunzo, an online retail website and a delivery start-up respectively, which have garnered more traction in the Indian market since the imposition of the national lockdown.⁶⁰ Similarly in China, Ewa Zhang and Yi Ji note that online sales for essential products, while earlier limited, grew by 6% during the lockdown in the first quarter of 2020.⁶¹ Additionally, in the USA, online retail grew by 14.5% from 2019.⁶² This led to reports of increased employment in the sector, with Amazon reportedly employing 100,000 new full-time positions.⁶³

Most other in-person services, such as education, retail, audio-visual services, etc. have moved online. The lack of physical communication has led to a stupendous growth in usage of video call services across the globe.⁶⁴ Similarly, education in large parts of the world at the K-12 level or even higher education moved online, thus leading to a growth in the usage of software programmes such as Zoom and Cisco WebEx,⁶⁵ and even to the introduction of Google's video call service, Google Meet, free of cost.⁶⁶ To further aid research, Cambridge made its e-library free⁶⁷ and databases such as JStor also followed suit.⁶⁸ Similarly, in the entertainment industry, platforms like Netflix have been releasing new content,

⁶⁰ Sangeeta Tanwar, *How India's food and grocery startups staged a comeback after initial Covid-19 blues*, QUARTZ INDIA (Apr. 27, 2020), <https://qz.com/india/1846019/how-bigbasket-licious-id-fresh-food-beat-coronavirus-lockdown/>.

⁶¹ Eva Zhang & Ji Yi, *In China's economic shock, online retail sales are prospering*, PETERSON INST. INT'L ECON. (Apr. 22, 2020), <https://www.piie.com/blogs/china-economic-watch/chinas-economic-shock-online-retail-sales-are-prospering>.

⁶² Jessica Young, *US ecommerce sales grow 14.9% in 2019*, DIGITAL COMMERCE 360 (Feb. 19, 2020), <https://www.digitalcommerce360.com/article/us-ecommerce-sales/>.

⁶³ Clare Duffy, *Amazon hiring 100,000 new distribution workers to keep up with online shopping surge caused by coronavirus*, CNN BUSINESS (Mar. 17, 2020), <https://edition.cnn.com/2020/03/16/tech/amazon-shipping-coronavirus/index.html>.

⁶⁴ *E-Commerce, Trade and COVID-19 Pandemic*, WORLD TRADE ORG. (May 04, 2020), https://www.wto.org/english/tratop_e/covid19_e/ecommerce_report_e.pdf.

⁶⁵ Emily Bary, *This is online education's moment' as colleges close during coronavirus pandemic*, MARKET WATCH (Mar. 18, 2020), <https://www.marketwatch.com/story/this-is-online-educations-moment-as-colleges-close-during-coronavirus-pandemic-2020-03-17>.

⁶⁶ Rachel Lerman, *Big Tech is coming for Zoom: Google makes video chatting service Meet free*, WASHINGTON POST (Apr. 30, 2020), <https://www.washingtonpost.com/technology/2020/04/29/google-meet-zoom-competitor/>.

⁶⁷ *Cambridge gives free access to HE textbooks and coronavirus research*, RES. INFO. (Mar. 19, 2020), <https://www.researchinformation.info/news/cambridge-gives-free-access-he-textbooks-and-coronavirus-research>.

⁶⁸ *Expanded access to JSTOR during COVID-19 crisis*, JSTOR (Apr. 15, 2020), <https://about.jstor.org/news/expanded-access-to-jstor-during-covid-19-crisis/>.

due to the growth of consumer bases, amid the lockdown.⁶⁹ The impact of the lockdown, however, is being felt by owners of movie multiplexes, for instance in India, wherein producers of big movies are now opting for a release on platforms like Netflix, Prime Video, and Disney+, until the lockdown is lifted.⁷⁰ While theatre owners suffer, the trickledown effect on their employees does not seem too favourable or positive. However, the growth in e-commerce media services shows another success story in an otherwise bleak period. While the overall employment market does seem weak in these times, there seems to be some scope for improvement in the service sector that has not entirely shut down, given the circumstances. This also serves as an example of how digital trade may lead to creation of opportunities.

D. Creating Employment through Digital Trade?

While the flow of digital information has been a key driver of economic development, the advent of technology and advancement in digitisation has often led to concerns regarding displacement of employees or creation of unemployment. In fact, Frey and Osborne, in their study on the effect of computerisation on employment, have noted that 47% of the American labour force is employed in industries where their jobs could be replaced by machines or artificial intelligence.⁷¹ However, at the same time, von Briel, Davidson and Recker suggest that services arising out of digital technologies might aid in facilitating more start-ups, thereby encouraging entrepreneurship, rather than reliance on other employment.⁷² While both these schools of thought may be true, it is rather surprising to note the potential that trade in services may have in creation of employment opportunities.

In this regard, the internet and internet-related services are vital for companies and organisations across the world to aid cross-border data flow. As mentioned earlier, MSMEs could be a reliable tool to increase employment. However, to further aid this process, digital services such as cloud computing, access to e-markets, and

⁶⁹ Dominic Rushe & Benjamin Lee, *Netflix doubles expected tally of new subscribers amid Covid-19 lockdown*, THE GUARDIAN (Apr. 21, 2020), <https://www.theguardian.com/media/2020/apr/21/netflix-new-subscribers-covid-19-lockdown>.

⁷⁰ *COVID-19 impact: Seven movies to premiere directly on Amazon Prime Video*, DECCAN HERALD (May 15, 2020), <https://www.deccanherald.com/entertainment/entertainment-news/covid-19-impact-seven-movies-to-premiere-directly-on-amazon-prime-video-837841.html>.

⁷¹ Carl Benedikt Frey & Michael Osborne Frey, *The Future of Employment: How susceptible are jobs to computerisation?* 114 TECH. FORECASTING & SOC. CHANGE 254 (2017).

⁷² Fredrick von Briel et al., *Digital Technologies as External Enablers of New Venture Creation in the IT Hardware Sector*, 42(1) ENTREPRENEURSHIP THEORY & PRACTICE 47 (2017).

access to foreign markets and customers are required for a global reach. In fact, McKinsey has demonstrated the growing need of digital trade by showing how such flows have raised world GDP by 10% and amount for greater global shares than even cross-border trade in goods.⁷³ Zhang suggests the use of blockchain technology as another digital tool that may aid in the expansion of services trade by engaging more inclusively with marginalised individuals.⁷⁴ Burri further suggests that digital trade does not merely include e-commerce, but also enables innovation and free flow of data in a global economy.⁷⁵ Perhaps, this is why the internet has been termed the ‘great equaliser’.⁷⁶

Although there exists scepticism regarding employment opportunities in the era of digital trade, it must be noted that data flows, within and across borders, have an impact on economic development. Information and Communication Technologies (ICT), in fact, have been shown to lead to positive effects at the firm level.⁷⁷ Nordas finds, on the basis of gravity estimates, that connectivity by way of ICT is an important driver for trade in computers and other services.⁷⁸ Additionally, flow of data improves day-to-day management of companies through business innovation – information technology (IT), back-office consolidation, digitalised human resources services, supply chain management, etc. – economic growth, and job creation.⁷⁹ The UNCTAD reports that by 2022, global Internet Protocol (IP) traffic may reach 150,700 GB per second, with people moving online at greater

⁷³ James Manyika et al., *Digital globalization: The new era of global flows*, MCKINSEY GLOBAL INSTITUTE (Feb. 24, 2016), <https://www.mckinsey.com/~media/McKinsey/Business%20Functions/McKinsey%20Digital/Our%20Insights/Digital%20globalization%20The%20new%20era%20of%20global%20flows/MGI-Digital-globalization-Full-report.ashx>.

⁷⁴ Weiwei Zhang, *Blockchain: Replacing, Eliminating and Creating Services*, 12(1) TRADE, L. & DEV. 188 (2020).

⁷⁵ Mira Burri, *Trade in Services Regulation in the Data Driven Economy*, 12(1) TRADE, L. & DEV. 208 (2020).

⁷⁶ INT'L. CHAMBER OF COMMERCE, *TRADE IN THE DIGITAL ECONOMY - A PRIMER ON GLOBAL DATA FLOWS FOR POLICYMAKERS* (2016), <https://cdn.iccwbo.org/content/uploads/sites/3/2016/09/Trade-in-the-digital-economy-A-primer-on-global-data-flows-for-policymakers.pdf>.

⁷⁷ Tobias Kretschmer, *Information and communication technologies and productivity growth: A survey of the literature*, (Org. Econ. Cooperation & Dev., Digital Economy Paper No. 195, Apr. 3, 2012); T.D. Stanley et al., T. D. Stanley, *Does ICT generate economic growth? A meta-regression analysis*, 32(3) J. ECON. SURVEYS 705 (2018).

⁷⁸ Hildegunn Kyvik Nordås, *Telecommunication: The Underlying Transport Means for Services Export*, 12(1) TRADE, L. & DEV. 158 (2020).

⁷⁹ Joshua P. Meltzer, *Supporting the Internet as a Platform for International Trade*, Global Econ. & Dev. at Brookings Institution, Working Paper No. 69, Feb., 2014), <https://www.brookings.edu/wp-content/uploads/2016/07/02-internet-international-trade-meltzer.pdf>.

speeds than ever before.⁸⁰ The same report also states that a digital economy could lead to more jobs even for the less skilled, and a digitalised economy could lead to more opportunities for research and establishing ICT infrastructures.⁸¹ In fact, developing economies, like some in Asia, are promoting IT-enabled services to increase prospective job opportunities.⁸² For instance, in India, the World Bank found that Indian software exports grew from USD 225 Million in 1992-93 to USD 1.75 billion in 1997-98, when digital services gained more traction in India.⁸³ The OECD reports that investment in such sectors is crucial for innovation and growth of jobs in any economy, but particularly in the digital economy.⁸⁴

However, all good things do also have a downside. A concerning aspect is that while digital trade and ICTs may create more opportunities in the short-term, there may be a loss of jobs in the long-term. Thus, there is a need for a robust framework to regulate the same and to ensure that all are treated on an equal footing. The OECD suggests the same for sectors where there is scope for automation, such as retail and finance.⁸⁵ Additionally, while ICTs have been hailed as drivers of growth, it has also been noted by Solow that a productivity paradox exists.⁸⁶ This has generally been found in developed countries having greater access to digital technology, and implies a lag between productivity and development in digital trade.⁸⁷ Further, privacy concerns could also hamper such trade and thereby,

⁸⁰ U. N. Conference on Trade & Dev, Digital Economy Report 2019 – Value Creation and Capture: Implications for Developing Countries (2019), https://unctad.org/en/PublicationsLibrary/der2019_overview_en.pdf [hereinafter Digital Economy Report].

⁸¹ *Id.*; U. N. CONFERENCE ON TRADE & DEV, UNCTAD HANDBOOK OF STATISTICS 2017, (Jan. 26, 2018), https://unctad.org/en/PublicationsLibrary/tdstat42_en.pdf; WORLD BANK, ANNUAL REPORT 2018 (2018), <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/630671538158537244/the-world-bank-annual-report-2018>.

⁸² Neils Beerepoot & Charlotte Keijser, *The service outsourcing sector as driver of development: The expectations of Ghana's ICT for accelerated development programme – Ghana's ICT for Accelerated Development Programme*, 106(5) TIJDSCHRIFT VOOR ECONOMISCHE EN SOCIALE GEOGRAFIE 556 (2014); Richard Heeks & Shobha Arun, *Social outsourcing as a development tool: The impact of outsourcing IT services to women's social enterprises in Kerala*, 22(4) J. INT'L DEV. 441 (2010).

⁸³ U. N. Econ. & Soc. Council, Comm. on Human Rights, Rep. of the High Commissioner, *Economic, Social and Cultural Rights: Liberalization of trade in services and human rights*, U.N. Doc. E/CN.4/Sub.2/2002/9 (Jun. 25, 2002), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G02/141/14/PDF/G0214114.pdf?OpenElement>.

⁸⁴ *New Markets and New Jobs in the Digital Economy*, (Org. Econ. Cooperation & Dev. Ministerial Meeting, 2016), <https://www.oecd.org/internet/ministerial/meeting/New-Markets-and-New-Jobs-discussion-paper.pdf>.

⁸⁵ *Id.*

⁸⁶ Robert Merton Solow, *We'd better watch out*, N. Y. TIMES BOOK REV., July 12, 1987.

⁸⁷ Digital Economy Report, *supra* note 80.

employment. For this, the GATS, within Article XIV, seeks to protect the privacy of individuals by ensuring that Member States comply with laws and regulations pertaining to processing and dissemination of personal data, and ensuring confidentiality of records.

IV. DEVELOPING TRADE IN SERVICES

While the GATS has been prevalent since 1995, its effectiveness, now, may be questioned. Understandably, global trade in services, standing at USD 13.3 trillion, is regulated by the four modes of services under the GATS,⁸⁸ however, it remains to be seen how the GATS will respond to global changes, such as digitisation, human rights issues, cross-border data transfer, etc. Newer obstacles keep arising and the question to be answered is how the current legal framework can satisfactorily regulate these obstacles, while also protecting employment.

A. The Trade in Services Agreement

Seemingly to redress new-age issues in services trade, the TiSA was proposed as the first plurilateral treaty on services since the GATS, in 2012-13.⁸⁹ This treaty has been dubbed the “most important free trade agreement you have never heard of” due to the overtly secretive nature of its negotiations.⁹⁰ It is the first agreement in over twenty years to only focus on updating standards in the global trade in services regime. The final negotiations for TiSA involved twenty-three WTO members, termed the “really good friends”, comprising of the European Union (EU), the USA, Canada, Mexico, Japan, Turkey, and Pakistan, among others.⁹¹ Surprisingly, parties like India and China (currently, two of the biggest traders in services) were not included in these negotiations.

The main objectives sought to be achieved by this agreement include improving market access, removing or reducing discriminatory barriers in cross-border trade in services, providing predictability in investment environment for service

⁸⁸ World Trade Report, *supra* note 14 at 7.

⁸⁹ *Trade in Services Agreement*, GLOBAL AFFAIRS CANADA, <https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/services/tisa-acs.aspx?lang=eng> [hereinafter TiSA].

⁹⁰ Alberto Mucci, *The Most Important Free Trade Agreement you have Never Heard of*, POLITICO (July 07, 2016), <https://www.politico.eu/article/the-most-important-free-trade-agreement-youve-never-heard-of/>.

⁹¹ Amit Sengupta, *Trading Away Access to Public Services*, NEWS CLICK (Sept. 05, 2014), <https://www.newsclick.in/international/trading-away-access-public-services-0>.

suppliers, and improving the mobility of services providers.⁹² Final negotiations indicated that the proposal shall include four parts within the ambit of the TiSA:⁹³

- 1) a core text that builds on key provisions of the GATS and is horizontally applied to all parts of the agreement;
- 2) special commitments on market access;
- 3) specific sectoral regulatory annexes; and
- 4) institutional provisions that set rules for how the TiSA would function, expand, or be amended.

Further, an EU report suggests that this agreement would include sector-specific regulatory structures for air and land transport, e-commerce, distribution and selling, energy and environmental services, telecommunications, and financial services.⁹⁴ Recognising these sectors seems to be the need of the hour, considering the rapid pace of technological development and cross-border services, as they may lead to broader market access and provide better footing to providers from developing countries and LDCs as well.⁹⁵ Given the current situation in world trade caused by the COVID-19 pandemic, regulation of aspects of digital services, such as e-commerce, is most urgent.

While differing in specificity from the GATS, the TiSA still seeks to build upon the foundation of the GATS by addressing non-discrimination, most favoured nation treatment, national treatment, and transparency.⁹⁶ It seeks to foster freer services trade via a more level playing field, and could provide a creative way to help reframe hostilities in trade in goods and find a way out of the current dead end between trading relations. However, critics suggest that it may restrict the ability of

⁹² TiSA, *supra* note 89.

⁹³ Rachel F. Fefer, TRADE IN SERVICES AGREEMENT (TiSA) NEGOTIATIONS: OVERVIEW AND ISSUES FOR CONGRESS, CONGRESSIONAL RESEARCH SERVICE REPORT (Jan. 03, 2017), <https://fas.org/sgp/crs/misc/R44354.pdf>.

⁹⁴ Elina Viilup, *The Trade in Services Agreement (TiSA): An end to negotiations in sight?* EUROPEAN PARLIAMENT (Oct. 12, 2015), [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_IDA\(2015\)570448](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_IDA(2015)570448); Bryce Baschuk, *Services Negotiators Anxious to Move Forward*, BNA INT'L. TRADE REPORTER, (Oct. 13, 2015).

⁹⁵ Barbara C. Matthews et al, *Trade in Services Agreement: A Way out of the Trade War?* ATLANTIC COUNCIL (July 23, 2018) <https://www.atlanticcouncil.org/blogs/new-atlanticist/trade-in-services-agreement-a-way-out-of-the-trade-war/>.

⁹⁶ EUROPEAN COMMISSION, REPORT OF THE 21ST TiSA NEGOTIATION ROUND, (Nov. 17, 2016), http://trade.ec.europa.eu/doclib/docs/2016/november/tradoc_155095.pdf; MICHAEL B.G. FROMAN, *Letter to Chairman Orrin Hatch*, INSIDE TRADE, (Apr. 22, 2015), http://insidetrade.com/sites/insidetrade.com/files/documents/apr2015/wto2015_1321b.pdf.

a State to regulate their rules in the future.⁹⁷ Given that this treaty has yet to see the light of day, its future is still quite uncertain and thus, any analysis of it as being positive or otherwise is just pure conjecture.

B. Trade Agreements, Services and Enabling Employment

In recent times, the legitimacy of the multilateral trading system has come into question. A primary reason for this is the existence and growth of regional trade agreements (RTA). An RTA is defined as a treaty between a two or more States to define the rules of trade for them. Although not seemingly in conformity with the principles governing world trade, RTAs on services are, in fact, protected under Article V of the GATS. Common examples of such RTAs are the NAFTA, the EU, and the Asia-Pacific Economic Cooperation (APEC). These agreements have grown to cover not only rules governing tariffs, but also investments in services, regulations on competition policies, among other areas. The World Bank has shown how RTAs have become more complex over the years, as such:⁹⁸

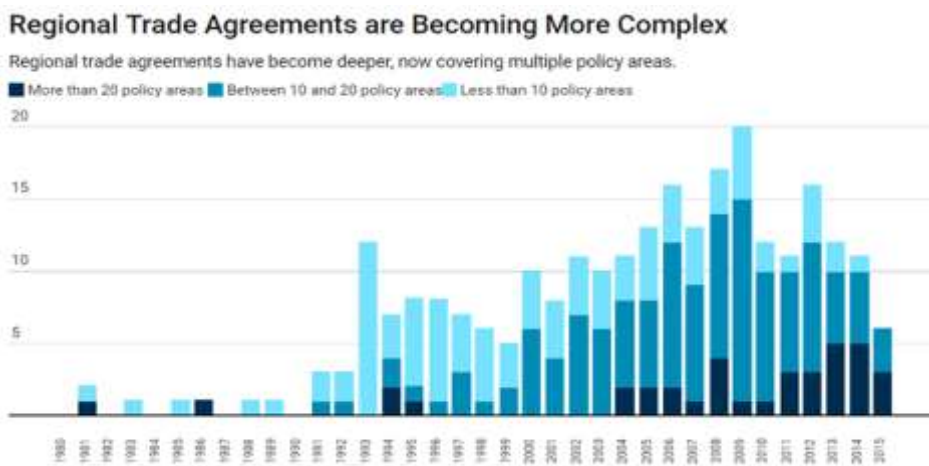


Figure 2: Number of Policy Areas Covered by Regional Trade Agreements (1980-2015)

Source: World Bank Group⁹⁹

⁹⁷ Albert Mucci, *The most important free trade agreement you've never heard of*, POLITICO (July 07, 2016), <https://www.politico.eu/article/the-most-important-free-trade-agreement-youve-never-heard-of/>.

⁹⁸ *Regional Trade Agreements are becoming more complex*, WORLD BANK, https://www.worldbank.org/content/dam/photos/780x439/2018/apr-1/rtas_depth.png.

⁹⁹ Dana Smillie, *Regional Trade Agreements*, THE WORLD BANK (Apr. 05, 2018), <https://www.worldbank.org/en/topic/regional-integration/brief/regional-trade-agreements>.

Given their wide scope, it is also interesting to understand how these agreements may affect employment. While some believe that such agreements would foster development and growth between trading partners, there are also those who believe that entering into such an agreement will harm the domestic economy more severely than any good that may arise out of it. For instance, US President Donald Trump withdrew the nation's membership of the Trans-Pacific Partnership (TPP) owing to his belief that factory workers would continue to lose their jobs if the USA remained in the TPP, and that it would undermine its independence.¹⁰⁰ Such a view was also noticed in India, vis-à-vis the Regional Comprehensive Economic Partnership (RCEP).¹⁰¹ However, in contrast, it is suggested that there is a little to prove such a direct causation.¹⁰²

At this time, most RTAs have committed to liberalisation of trade in services. Further, the WTO estimates that over 30% of the RTAs notified include labour provisions and safeguards for the same,¹⁰³ despite the fact that there are no particular rules by the WTO on this. These clauses seek to redress what could be the deleterious fallout of globalisation: unemployment and hazardous working conditions. The concept of labour standards, per se, generally includes the internationally accepted core standards, recognised as such by the ILO and also includes decent work, as well as acceptable wages and working conditions.¹⁰⁴

Now, while promoting labour standards, RTAs do also have the potential to create jobs in all sectors. For instance, for India, export is a big driver of the economy, and thus, signing trade agreements in this sector could lead to export-led growth and employment therein.¹⁰⁵ To that end, Chaturvedi and Saha further suggest that twenty-eight RTAs with India as a partner could lead to high employment

¹⁰⁰ Karishma Vaswani, *How much truth is there in Trump's TPP claims?*, BBC NEWS (Jan. 24, 2017), <https://www.bbc.com/news/business-38728059>.

¹⁰¹ *Employment crisis and free trade agreements (FTAs): Why workers should reject RCEP, BILATERALS*, (Apr. 27, 2017), <https://www.bilaterals.org/?employment-crisis-and-free-trade>.

¹⁰² Greg Wright & Emily J. Blanchard, *Is Trump right that the TPP will destroy millions of jobs and cede US sovereignty?*, THE CONVERSATION (July 06, 2016), <https://theconversation.com/is-trump-right-that-the-tpp-will-destroy-millions-of-jobs-and-cede-us-sovereignty-62085>.

¹⁰³ Rohini Acharya, *Regional trade agreements: challenges and opportunities*, INT'L. TRADE CTR. (Dec. 20, 2018), <http://www.intracen.org/news/Regional-trade-agreements-challenges-and-opportunities/>.

¹⁰⁴ Isao Kamata, *Labor Clauses in Regional Trade Agreements and Effects on Labor Conditions: An Empirical Analysis*, (Kyoto University Discussion Paper No. E-14-019, Mar., 2015), at 4, <http://www.econ.kyoto-u.ac.jp/projectcenter/Paper/e-14-019.pdf>.

¹⁰⁵ SOUTH ASIA ECONOMIC AND POLICY STUDIES, MANUFACTURING AND JOBS IN SOUTH ASIA: STRATEGY FOR SUSTAINABLE ECONOMIC GROWTH 106 (Sachin Chaturvedi & Sabyasachi Saha eds., 1st ed., 2020).

generation, and of them nineteen have the capacity to improve high technology imports from India.¹⁰⁶ Similarly, the Continental Free Trade Agreement (CFTA) has grown in importance in the African region as it seeks to liberalise services trade and create a single market for goods and services. Welfare trade benefits arising out of such integration includes value added jobs, technological specialisation, exports, etc.¹⁰⁷ The UNCTAD reports that benefits arising out of this agreement could include greater employment in the service sector,¹⁰⁸ which could also lead to an improvement in the rate of job growth as required. It is reported that increasing export-based trade could lead to job creation in Africa,¹⁰⁹ where there is a projected need to create 18 million jobs per year between 2015 and 2035 to absorb the youth entering the labour market.¹¹⁰ Accordingly, improving services-based trade could aid in bridging the gap and the CFTA may be the appropriate tool to do so with the governments' concerted efforts.

V. CONCLUSION

Over the course of this paper, we set out to answer whether trade in services could solve the problem that unemployment has caused and if yes, whether the GATS would be an effective framework to do so. While it is easy to portray a unidimensional perspective, it is to be understood that the ground reality may not be the same as what is portrayed in literature. So, while in certain aspects, the trade in services can definitely create jobs, it must also be noted that services trade may also reduce jobs due to the growth of digital trade. In this light, while the GATS may be an effective tool, it does require to be amended to reflect new age issues. As Professor Adlung states, the GATS is a flexible framework that seeks to cover multiple parts of services trade and has the scope to evolve and do more than it is given credit for.¹¹¹ However, the growth of RTAs and region-specific laws has also led to the dilution of the GATS's efficacy or even, dare we say, faith in the GATS. It is also tough to say whether the TiSA will see the light of day in the foreseeable future, or what its impact may be. While it does seem more encompassing than the

¹⁰⁶ *Id.*

¹⁰⁷ *The Africa Continental Free Trade Area: Benefits, Costs and Implications*, INFOMINEO, <https://infomineo.com/africa-continental-free-trade-area/>.

¹⁰⁸ *African Continental Free Trade Area: Challenges and Opportunities of Tariff Reduction*, (U. N. Conference Trade & Dev. Research Paper No. 15, UNCTAD/SER. RP/2017/15/Rev.1, Feb., 2018), https://unctad.org/en/PublicationsLibrary/ser-rp-2017d15_en.pdf.

¹⁰⁹ Aid for Trade Report, *supra* note 34.

¹¹⁰ AFRICAN DEV. BANK GROUP, JOBS FOR YOUTH IN AFRICA: STRATEGY FOR CREATING 25 MILLION JOBS AND EQUIPPING 50 MILLION YOUTH 2016-2025, (2016), https://www.afdb.org/fileadmin/uploads/afdb/Documents/Boards-Documents/Bank_Group_Strategy_for_Jobs_for_Youth_in_Africa_2016-2025_Rev_2.pdf.

¹¹¹ Rudolf Adlung, *GATS: A Sleeping Beauty?*, 12(1) TRADE, L. & DEV. 24 (2020).

present GATS, any discourse regarding its impact is only pure conjecture. That said, we hope to see a framework that effectively encompasses all these concerns, while also simultaneously ensuring labour security.