



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Navigating The Global Services Trade Landscape: Exploring Gats and Competition Law Dynamics

Ria Goyal^a Divik Gupta^b

^aThe NorthCap University, Gurugram, India ^bSymbiosis Law School, Noida, India

Received 12 March 2024; Accepted 13 April 2024; Published 16 April 2024

In the intricate landscape of the global economy, the General Agreement on Trade in Services (GATS) emerges as a linchpin governing cross-border service trade. This paper delves into the multifaceted dynamics of GATS and its interplay with competition law. Beginning with a comprehensive introduction, the paper provides a brief background introduction on GATS, which sets the stage for understanding the fundamental principles of GATS, its evolution in its modern form, and its major objectives. In the main part of the paper, the major provisions of the agreement are discussed, depicting the modes of supply and the commitments, and proceeds to discuss the details of the more technical concepts such as market access and national treatment. Subsequently, it analyses the implications of the GATS for developing countries, the opportunities, and challenges, and how GATS could facilitate the great leaps in development that developing countries are yearning for. The paper concludes by emphasising the need to build capacity and enhance regional cooperation. In the field of legal services, it outlines the impact of GATS on market access and regulatory issues, including new technologies that are transforming legal practice and re-engineering legal systems. The intersection of competition and trade, explains how competition policy intersects with trade, with implications for global growth and development. It emphasises the need for a reinvigorated focus on ensuring effective competition policy in the WTO, along with efforts for deeper international cooperation. Navigating through dispute settlement mechanisms, the paper underscores the importance of a rules-based process in resolving trade disputes related to services. In the analytical part, the paper dwells on the circadian services' ecosystem and assigns GATS an adaptive role vis-à-vis the digitalisation of the economies, e-commerce, and sustainability demands. In conclusion, it points to GATS' adaptability and ability to leverage digital innovation in the interest of the member countries. Moreover, it stresses the importance of maintaining ongoing dialogue and collaboration to tackle evolving

challenges and reap the fruits of international services trade in favour of all the stakeholders. It is an in-depth analysis of the GATS and the implications of a multilateral plurilateral agreement between trade negotiators in Brussels and lawmakers in Geneva, for competition law, development, legal services, and the global economy, giving some pointers along the way as to how to think through the dilemmas that modern trade poses.

Keywords: *GATS, WTO, competition law, international trade.*

INTRODUCTION

Amidst the dynamic landscape of the contemporary global economy, characterized by unparalleled levels of connectivity and trade, the mechanisms that underpin international commerce have assumed paramount importance. In this intricate web of international trade mechanisms, the General Agreement on Trade in Services (GATS), a foundational treaty established under the auspices of the World Trade Organization (WTO), emerges as a linchpin in the complex orchestration of cross-border service trade. As economic activity becomes progressively less confined by physical boundaries, the pertinence of GATS reverberates more resoundingly, delineating the parameters within which services traverse international frontiers. The advantages it confers are multifaceted – facilitating nations' access to specialized services from abroad, fostering competition that catalyses innovation, and providing a platform for small and medium-sized enterprises (SMEs) to participate in global trade. GATS, as a catalyst for economic growth, concurrently forms the bedrock of international cooperation.¹

In this era of transformation, where the intangible currents of services play an ever more central role in driving economic growth and innovation, the GATS treaty assumes a role of pivotal significance. It guides the flow of services across international borders, ensuring a delicate equilibrium between liberalization and regulatory sovereignty.

¹ Andrew T Guzman, 'The Case for International Antitrust' (2003) <<https://papers.ssrn.com/abstract=412300>> accessed 10 January 2024

Nevertheless, the path towards harnessing the advantages of GATS is not devoid of challenges. Balancing national sovereignty with the exigencies of international trade can often result in clashes between domestic regulatory independence and the commitments enshrined in GATS. The very diversity that characterizes the service sector- spanning cultural, social, and economic dimensions complicates negotiations. Moreover, complexities surrounding data privacy, intellectual property rights, and environmental regulations present intricate scenarios that require nuanced strategies to strike a harmonious balance.²

In this paper, we shall navigate the intricate labyrinth of GATS, revealing its foundational principles, dissecting its multifaceted provisions, and contemplating its malleability in response to the swiftly shifting global economic landscape.

BACKGROUND

The history and evolution of GATS underscore the recognition of services' pivotal role in the global economy. GATS stands as a testament to the adaptability of international trade regulations, catering to the unique characteristics of the service sector. GATS emerged as a response to shifting trade paradigms, eventually maturing into a comprehensive framework that governs the international trade of services.

As global dynamics continue to evolve, GATS remains an instrumental instrument in shaping the rules that govern cross-border service trade, all while fostering international economic integration.

The roots of GATS can be traced back to the Uruguay Round of trade negotiations, spanning from 1986 to 1994. The agreement was formally integrated into the Uruguay Round Accords in 1994, as a foundational element of the newly established WTO. Its commencement was set for January 1, 1995.³ This round marked an endeavour to modernize and broaden the multilateral trading system, encapsulated under the General Agreement on Tariffs and Trade (GATT), the

² 'CBT - Misconceptions about the GATS' (WTO)

<https://www.wto.org/english/tratop_e/serv_e/cbt_course_e/c8s3p1_e.htm> accessed 10 January 2024

³ 'The GATS: Objectives, Coverage and Disciplines' (WTO)

<https://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm> accessed 10 January 2024

precursor to the World Trade Organization (WTO). Amid these negotiations, it became increasingly evident that services were a critical component of the global economy, necessitating dedicated regulations.⁴

GATS was designed with a set of primary objectives:

Trade Liberalization in Services: GATS aimed to foster gradual liberalization by dismantling trade barriers and expanding access to service markets

Security and Predictability: The agreement sought to offer a secure and predictable environment for cross-border service trade, encouraging sustained growth in such transactions.

Equitable Competition: GATS aspired to promote equitable competition by ensuring that domestic regulations did not become undue hindrances to international service trade.

Non-Discriminatory Principles: Aligned with WTO principles, GATS upheld non-discrimination through most-favoured-nation (MFN) treatment and national treatment, ensuring equal treatment for foreign and domestic service providers.⁵

KEY PROVISIONS

1. Modes of Supply

GATS categorizes the movement of services across borders into four distinct modes of supply, each encapsulating a unique interaction between the service supplier and recipient:

Cross-Border Supply (Mode 1): This mode involves services delivered from one member's territory to another's, without the physical presence of the supplier. While seemingly

⁴ Alberto Heimler and Robert D Anderson, 'What Has Competition Done for Europe? An Inter-Disciplinary Answer' (2008) SSRN Paper No 4, 2007 <<https://papers.ssrn.com/abstract=1081563>> accessed 10 January 2024

⁵ 'UNTC' (UN) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-1-b&chapter=10&clang=en> accessed 10 January 2024

straightforward, challenges arise in areas such as regulatory alignment and data protection, particularly in the era of digital services.⁶

Consumption Abroad (Mode 2): Here, consumers move to the territory of the service supplier to avail themselves of services. This mode often raises questions about visa requirements, recognition of qualifications, and consumer rights in a foreign jurisdiction.

Commercial Presence (Mode 3): In this mode, service suppliers establish a commercial presence in another member's territory. Issues related to market access, national treatment, and regulatory harmonization become paramount, especially concerning foreign direct investment in the service sector.

Presence of Natural Persons (Mode 4): Mode 4 involves the temporary movement of natural persons across borders to provide services. Balancing the right of individuals to move freely for work purposes with the need to protect domestic labour markets and social norms presents a constant challenge.

2. Obligations⁷

General Obligations

Most-Favoured-Nation Treatment: As outlined in Article II of the GATS, members are obligated to immediately and unconditionally extend treatment to services and service suppliers from all other members that are no less favourable than what is granted to similar services and service suppliers of any other country. Essentially, this prohibits the establishment of preferential arrangements or reciprocal provisions that limit access benefits to trading partners who offer comparable treatment.

Exceptions, referred to as Article II exemptions, can be sought. These exemptions were permitted before the Agreement came into force. However, new exemptions are only granted to

⁶ 'Marrakesh Agreement Establishing the World Trade Organization' (WTO) <https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm> accessed 10 January 2024

⁷ Guzman (n 1)

new members upon accession or, to current members, through a waiver under Article IX: 3 of the WTO Agreement. All exemptions are subject to periodic review, with a general duration of no more than 10 years. Furthermore, under specific conditions, the GATS permits groups of members to form economic integration agreements or mutually acknowledge regulatory standards, certifications, and similar aspects.

Transparency: GATS members have an obligation to publish measures that have general applicability. Additionally, they are required to establish national inquiry points that are mandated to respond to information requests from other members. This contributes to fostering transparency and ensuring clear communication among members.

Other General Obligations: GATS also includes requirements for the establishment of administrative review and appeals procedures. Furthermore, it introduces regulations concerning the operation of monopolies and exclusive suppliers.⁸

Specific Obligations

Market Access: Market access is a negotiated commitment within specified sectors. Such commitments can be subject to various types of limitations listed in Article XVI (2). These limitations may encompass factors like the number of service suppliers, the extent of service operations or employees, transaction values, the legal structure of the service supplier, or the involvement of foreign capital.

National Treatment: A commitment to national treatment signifies that the member in question refrains from discriminatory measures that confer advantages exclusively to domestic services or service suppliers. The pivotal requirement is to avoid modifying, either legally or in practice, the conditions of competition in favour of the member's own service industry. Similar to market access, commitments to national treatment can be made contingent upon specific conditions and qualifications.

⁸ 'Intergovernmental Policy Advisory Committee, *Advisory Committee Report to the President, the Congress and the United States Trade Representative on the NAFTA 2.0 Agreement* (2018)

Members possess the liberty to tailor the scope and substance of these commitments in alignment with their own preferences. Consequently, these commitments tend to mirror national policy aims and constraints, both collectively and within specific sectors. While some members have limited the scheduling of service commitments, others have embraced market access and national treatment rules across an extensive array of services.⁹

The presence of these specific commitments triggers additional responsibilities, including the obligation to notify significant new measures that impact trade and to avoid implementing constraints on international payments and transfers.

GATS AND DEVELOPING COUNTRIES

GATS provides developing countries with a platform to gain access to larger and more developed service markets. It allows their service providers to offer their expertise internationally, potentially increasing export opportunities.

GATS' provisions on commercial presence (Mode 3) enable Foreign Service providers to establish a presence within developing countries. This influx of FDI can stimulate economic growth, create jobs, and facilitate technology transfer.

Engagement in cross-border service trade often entails the transfer of knowledge and technology. Developing countries can benefit from the expertise and best practices of more advanced nations, which can accelerate their development.

GATS encourages the diversification of service sectors. For many developing nations, this diversification is critical to reducing their dependency on a few primary industries and increasing economic resilience.

⁹ Juan A. Marchetti and Petros C. Mavroidis, 'What Are the Main Challenges for the GATS Framework? Don't Talk About Revolution' (2004) 5(3) European Business Organization Law Review (EBOR) <<https://www.cambridge.org/core/journals/european-business-organization-law-review-ebor/article/abs/what-are-the-main-challenges-for-the-gats-framework-dont-talk-about-revolution/9DCE67DBF7BA42B1475B9540D32E62EC>> accessed 10 January 2024

However, this comes with its own set of challenges. Developing countries may lack the institutional capacity and regulatory frameworks to fully leverage GATS. Building this capacity is a priority but can be resource-intensive and time-consuming. Negotiating trade agreements, including GATS commitments, can be challenging for developing nations due to unequal bargaining power. Ensuring their interests are protected requires skilled negotiators and strategic planning. GATS allows countries to exclude services provided in the exercise of governmental authority from its scope. Developing countries must carefully define and protect essential public services like healthcare and education.¹⁰

Striking a balance between trade liberalization and the need to safeguard domestic industries and employment is a complex task. Developing countries must carefully consider the pace and extent of liberalization.

Some strategies that the developing countries can opt for are gradual liberalization, and phasing in GATS commitments over time to align with their development goals and regulatory capacity. Investing in institutional capacity, legal expertise, and regulatory frameworks is essential to effectively negotiate and implement GATS commitments.

Developing countries can collaborate to build capacity, share knowledge, and negotiate collectively to strengthen their position in trade negotiations. Regional trade agreements can provide a stepping stone for developing countries to gain experience in services trade negotiations before engaging on a global scale through GATS. Engaging the private sector in developing and implementing GATS commitments can be mutually beneficial, as it helps bridge capacity gaps and fosters economic growth.

IMPACT ON THE LEGAL SECTOR

¹⁰ Rupa Chanda, 'GATS and Its Implications for Developing Countries: Key Issues and Concerns' (2002) DESA Discussion Paper <<https://digitallibrary.un.org/record/497103?v=pdf>> 'What Are the Main Challenges for the GATS Framework? Don't Talk About Revolution' (2004) 5(3) European Business Organization Law Review (EBOR) <<https://www.cambridge.org/core/journals/european-business-organization-law-review-ebor/article/abs/what-are-the-main-challenges-for-the-gats-framework-dont-talk-about-revolution/9DCE67DBF7BA42B1475B9540D32E62EC>> accessed 10 January 2024

GATS has opened new avenues for legal professionals to provide services across borders. Legal consultations, advisory services, and even representation can now transcend geographical boundaries. Mode 1 (cross-border supply) and Mode 4 (presence of natural persons) enable legal practitioners to extend their expertise to international clients, fostering a global network of legal services.¹¹ This facilitates cross-border business transactions, trade disputes, and even international negotiations, bolstering the efficiency and effectiveness of legal practice.¹²

GATS' emphasis on market access and non-discrimination has spurred the liberalization of legal services. Foreign law firms and lawyers can establish a commercial presence (Mode 3) in other countries, contributing to the globalization of legal practice. This liberalization brings advantages such as increased competition, diversity of legal expertise, and enhanced opportunities for local legal professionals to collaborate with international counterparts. While GATS creates opportunities, it also poses regulatory challenges for the legal sector. Harmonizing legal qualifications, ethical standards, and disciplinary mechanisms across borders becomes imperative to ensure the quality of legal services¹³. GATS necessitates cooperation among nations to develop mutually acceptable norms, preventing discrepancies that could undermine trust and reliability in cross-border legal transactions.

GATS' influence extends beyond the procedural aspects of legal practice. As legal professionals navigate international transactions, disputes, and agreements, there is a growing need for an understanding of various legal systems. This convergence of legal principles and practices fosters a global legal language, facilitating smoother interactions and reducing the risk of miscommunication or legal misinterpretation.

The digital era has redefined legal services, and GATS' impact is no exception. Online legal consultations, virtual law firms, and digital platforms for dispute resolution have become

¹¹ Eleanor M. Fox, 'Antitrust Without Borders: From Roots to Codes to Networks' in Andrew T. Guzman (ed), *Cooperation, Comity, and Competition Policy* (OUP 2010) 265-286

¹² 'General Agreement on Trade in Services (GATS)' (*Global Affairs Canada*, 12 March 2014) <<https://www.international.gc.ca/trade-agreements-accords-commerciaux/wto-omc/gats-agcs/index.aspx?lang=eng>> accessed 12 January 2024

¹³ The GATS: Objectives, Coverage and Disciplines (n 3)

increasingly prevalent. GATS' modes of supply align with the borderless nature of digital services, allowing legal professionals to adapt to innovative modes of service delivery.

COMPETITION POLICY, TRADE AND THE GLOBAL ECONOMY: EXISTING WTO ELEMENTS, COMMITMENTS IN REGIONAL TRADE AGREEMENTS, CURRENT CHALLENGES, AND ISSUES FOR REFLECTION

Competition policy, today, is an essential element of the legal and institutional framework for the global economy. Whereas decades ago, anti-competitive practices tended to be viewed mainly as a domestic phenomenon, most facets of competition law enforcement now have an important international dimension. Examples include the investigation and prosecution of price fixing and market sharing arrangements that often spill across national borders and, in important instances, encircle the globe; multiple recent, prominent cases of abuses of a dominant position in high-tech network industries; important current cases involving transnational energy markets; and major corporate mergers that often need to be simultaneously reviewed by multiple jurisdictions.¹⁴

Beyond competition law enforcement per se, increasingly, major issues of competition policy (e.g., the impact on competition of the structure and scope of intellectual property rights or the role of state-owned enterprises) implicate the interests of multiple jurisdictions. To date, efforts to establish a general agreement on competition policy in the framework of the international trading system have been unsuccessful. Nonetheless, provisions relating to competition policy are incorporated in the WTO General Agreement on Tariffs and Trade (GATT)¹⁵, the General Agreement on Trade in Services (GATS); the Agreement on Trade-Related Intellectual Property Rights (TRIPS Agreement); the Agreement on Trade-Related Investment Measures (TRIMs Agreement); and other WTO instruments. Effective national competition policies are also essential to realizing the benefits derivable from participation in the (plurilateral) WTO

¹⁴ D Daniel Sokol, 'Monopolists without Borders: The Institutional Challenge of International Antitrust in a Global Gilded Age' (2007) 4 Berkeley Business Law Journal 37-122 <<https://scholarship.law.ufl.edu/facultypub/67>> accessed 12 January 2024

¹⁵ UNTC (n 5)

Agreement on Government Procurement (GPA).¹⁶ The importance of competition policy for world trade is also manifested by the increasing incorporation of undertakings on competition policy in the Protocols of Accessions that apply to new WTO Members, and in the work of the WTO Trade Policy Review Body, which systematically references developments regarding national competition policies in developed and developing jurisdictions.

The WTO Working Group on the Interaction between Trade and Competition Policy, which was active from 1997 through 2003 and which considered the case for a more general agreement on competition policy in the WTO, has been inactive since 2004. It is, nonetheless, available as a potential vehicle for stocktaking of developments and reflection on relevant issues if ever WTO Members find this useful and timely. A salient related consideration is that, whereas in 1997, when discussion commenced in the WTO Working Group, only around 50 economies in the world had national competition legislation, currently, about 135 WTO Members have such laws. These include all of the BRICS economies (Brazil, Russia, India, China, and South Africa) and a large number of other developing WTO Members.

Concurrent with the foregoing developments, increasing attention is being given, in international policy circles, to particular issues of competition law enforcement and competition policy with significance for the global economy. These include the international dimension of competition law cases, the resulting positive spillovers for economic welfare and potential for conflicts of jurisdiction; the broadening application of competition policy vis-à-vis intellectual property rights in the global economy; important issues concerning the potential for monopolization and the maintenance of competition in digital markets; issues concerning state-owned enterprises, the role of industrial policy and the maintenance of competitive neutrality in emerging economies; and a mounting concern, on the part of global businesses, to ensure non-discrimination, transparency, and procedural fairness in competition law enforcement worldwide.

DISPUTE SETTLEMENT MECHANISM

¹⁶ *Ibid*

The dispute settlement mechanism in GATS, like the one in other WTO agreements, is designed to provide a fair and orderly process for resolving trade disputes while upholding the principles of the WTO, including non-discrimination and dispute settlement in a manner that is consistent with international law. It plays a crucial role in maintaining the stability and predictability of international trade in services and promotes a rules-based trading system.¹⁷

Like other agreements under the WTO, GATS includes a dispute settlement mechanism to resolve conflicts among member countries. This mechanism ensures that trade disputes related to services are addressed through a rules-based process. Resolving disputes related to services can be complex due to the intangible nature of services, varying regulations, and diverse sectoral interests. The DSU provides a platform for members to seek resolutions based on legal interpretations.¹⁸

ANALYSIS

The service sector has witnessed unprecedented changes in recent times. From the rise of the digital economy to the increasing prominence of remote work and e-commerce, traditional boundaries have become obsolete. GATS, formulated in a pre-digital era, now faces the challenge of accommodating new forms of service delivery while retaining its core principles of non-discrimination, transparency, and fair competition.¹⁹

By virtue of the digital economy, the definition of what constitutes a service has changed, blurring the boundaries of the state, and requiring GATS to bring digital services more explicitly to its rules. The movement of data across borders for cloud computing, data analytics and online platforms has made clear that GATS needs to address issues related to the digital public trust landscape, such as data localisation, data privacy and protection, and intellectual property standards.

¹⁷ 'The First WTO Ministerial Conference' (WTO)

<https://www.wto.org/english/thewto_e/minist_e/min96_e/min96_e.htm> accessed 12 January 2024

¹⁸ 'EU Trade - The EU's Single Voice in International Trade' (European Commission)

<https://policy.trade.ec.europa.eu/index_en> accessed 12 January 2024

¹⁹ Daniel K Tarullo, 'Norms and Institutions in Global Competition Policy' (2000) 94(3) *The American Journal of International Law* <<https://www.jstor.org/stable/i323527>> accessed 15 January 2024

E-commerce has dramatically changed the way consumers buy goods and services. By mobilising a company's products in mega stores on the other side of the world without high costs, e-commerce offers a great opportunity for business development in the global marketplace. GATS must also respond by improving customs procedures, harmonising e-payment standards and easing controls for small and medium-sized enterprises (SMEs) to utilise the benefits of cybercommerce in an efficient manner while ensuring that businesses operating in the virtual world are on a level playing field with those operating in the traditional world.

The presence of natural persons (Mode 4 under GATS) has taken on a new dimension with remote work becoming mainstream. GATS must consider temporary cross-border movement for digital nomads and professionals. Harmonizing qualifications, work permits, and taxation rules will be pivotal in accommodating this evolving trend.

The cross-border flow of data fuels the digital economy, but it also raises concerns about data privacy and security. GATS should collaborate with international bodies to develop a framework that balances the need for data flow with individual privacy rights. Harmonizing data protection standards could foster greater trust in cross-border services.

As GATS evolves, it must not lose sight of sustainable development goals and inclusivity. Promoting the participation of developing countries and recognizing the importance of cultural diversity is integral to creating a balanced and equitable global services trade environment.

CONCLUSION

GATS, while comprehensive, faces challenges such as reconciling domestic regulations with international commitments, addressing the unique nature of different service sectors, and accommodating emerging digital and technological trends. In the digital age, issues related to data protection, intellectual property, and cybersecurity become paramount in the context of GATS.²⁰

²⁰ Brian Hindley, 'Competition Law and the WTO: Alternative Structures for Agreement' in Jagdish Bhagwati and R Hudec (eds), *Fair Trade and Harmonization* (OUP 1996)

As we cast our gaze towards the horizon of global economic integration, GATS stands tall as a testament to the ideals of collaboration and mutual gain. However, it is not a static entity; it must evolve to embrace the rapid metamorphosis underway in the realm of services. The digital revolution, the ascendancy of e-commerce, and the emergence of innovative service delivery mechanisms beckon GATS to recalibrate its provisions to accommodate the ever-evolving landscape. In its journey, GATS has undergone successive rounds of negotiations and reviews.

Beyond the above, 'Competition policy chapters have been incorporated into an extensive set of RTAs linking developed, developing and least-developed economies around the globe. As pointed out also in other studies of this issue, this attests clearly to the perceived relevance of competition policy to trade on the part of a broad cross-section of the WTO's Members.'²¹ These provisions also signal, at least at the level of principle, a significant degree of convergence on the substance of how competition policy may be framed in the context of international trade agreements. As such, the competition provisions of RTAs are an obvious reference point for stock-taking at the multilateral level and, arguably, provide a potential template for related action.

Acknowledging the need for innovation, inclusivity, and sustainability, GATS must chart a course through these uncharted waters, guided by a blend of sagacity and foresight. The future of GATS lies in its ability to adapt, innovate, and lead in an ever-changing services landscape. As services become more digital, interconnected, and diverse, GATS has a unique opportunity to facilitate global growth while safeguarding the interests of member nations and their citizens. By embracing digital services, addressing regulatory challenges, and fostering collaboration between nations, GATS can stride confidently into the future, ensuring that the benefits of international trade in services are harnessed by all while respecting the nuances of the modern global economy.

²¹ 'Competition Policy and the WTO - ActionAid' (YUMPU)
<<https://www.yumpu.com/en/document/read/41150715/competition-policy-and-the-wto-actionaid>> accessed 12 January 2024

To be clear, the issues and developments examined in this paper are complex, and any related initiatives doubtless will require careful reflection. In our view, 'great care should be taken, in any relevant international arrangements, to preserve or strengthen the operational imperatives and independence of law enforcement in this area. Perhaps, the right approach is simply to encourage continuing dialogue on relevant issues in the international fora that are or have been already active in the subject area.'²²

A valuable, objective and relatively uncontroversial contribution to this dialogue by the WTO would comprise the systematic collection of updated information on legal and policy settings across the WTO's Membership, the sharing of practical experience with a focus on specific areas of interplay between trade and competition, and cooperation (including with other international organizations) on empirically based capacity building.

²² World Trade Organisation, *WTO Annual Report 1998* (1998)