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# WTO reform: why, what and is it feasible?

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This presentation draws on work in progress with Charles Sabel (Open Plurilateral Agreements) and Aaditya Mattoo (Rethinking Reciprocity) that is supported by EU Horizon 2020 research and innovation grant no. 770680





# Changes in the world economy

- The “rise of the rest” – rapid changes in global market shares
- Structural transformation
  - Servicification; shift to digital economy (70%+ of GDP)
  - Fragmentation of production: GVCs; specialization
  - Automation (machine vision/learning)
- Climate change
- Connectivity: transport (goods and people); ICT
  - Movement of people; service suppliers; FDI; portfolio capital
  - Movement of data: Internet, social media...



# A more complex trade agenda

- A multi-actor, multi-instrument, transnational landscape:
  - Governments (public) vs. private rule-setters (e.g., GVCs)
  - Producers/businesses (“lead firms” vs. SMEs)
  - Advocacy/interest groups (NGOs)
  - Citizens/voters
- Changing political economy: local consumers & communities are more important actors
  - Concerns that trade be “fair” in terms of outcomes and conditions
  - International norms vs. protecting (projecting) national values
- Questions and policy challenges:
  - Managing adjustment costs & distributional effects
  - Greater interdependence/risks (product safety; security)
  - Who is us? Mobile capital vs immobile citizens (GNP vs GDP)
  - Legitimacy: who sets the rules? Who is accountable for results?

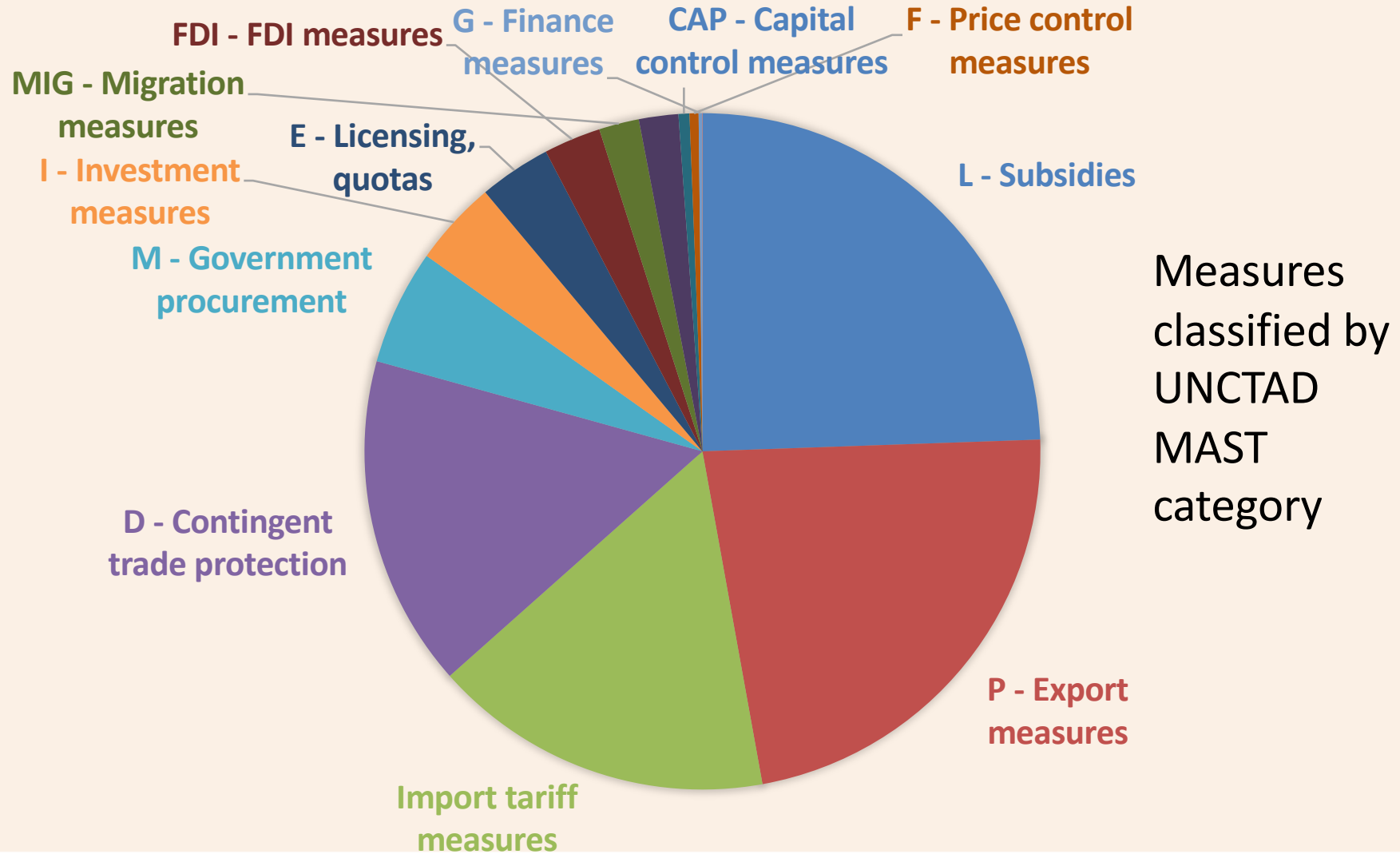


# Responses

- Rising protectionism in large countries – ‘make it here’ as opposed to ‘made in the world’ (viz. TPRM and GTA data)
- Calls for/action against ‘unfair’ competition
  - At industry/firm level: subsidies; SOEs; IPRs
  - At individual/community level: labor standards, etc.
- Calls/action to safeguard ‘regulatory space’/autonomy
  - Product safety; data security; data privacy; prudential
- Unilateral action complemented by piecemeal regulatory cooperation; and
- Deep(er) (discriminatory) trade agreements....although these increasingly confront public resistance in EU & US



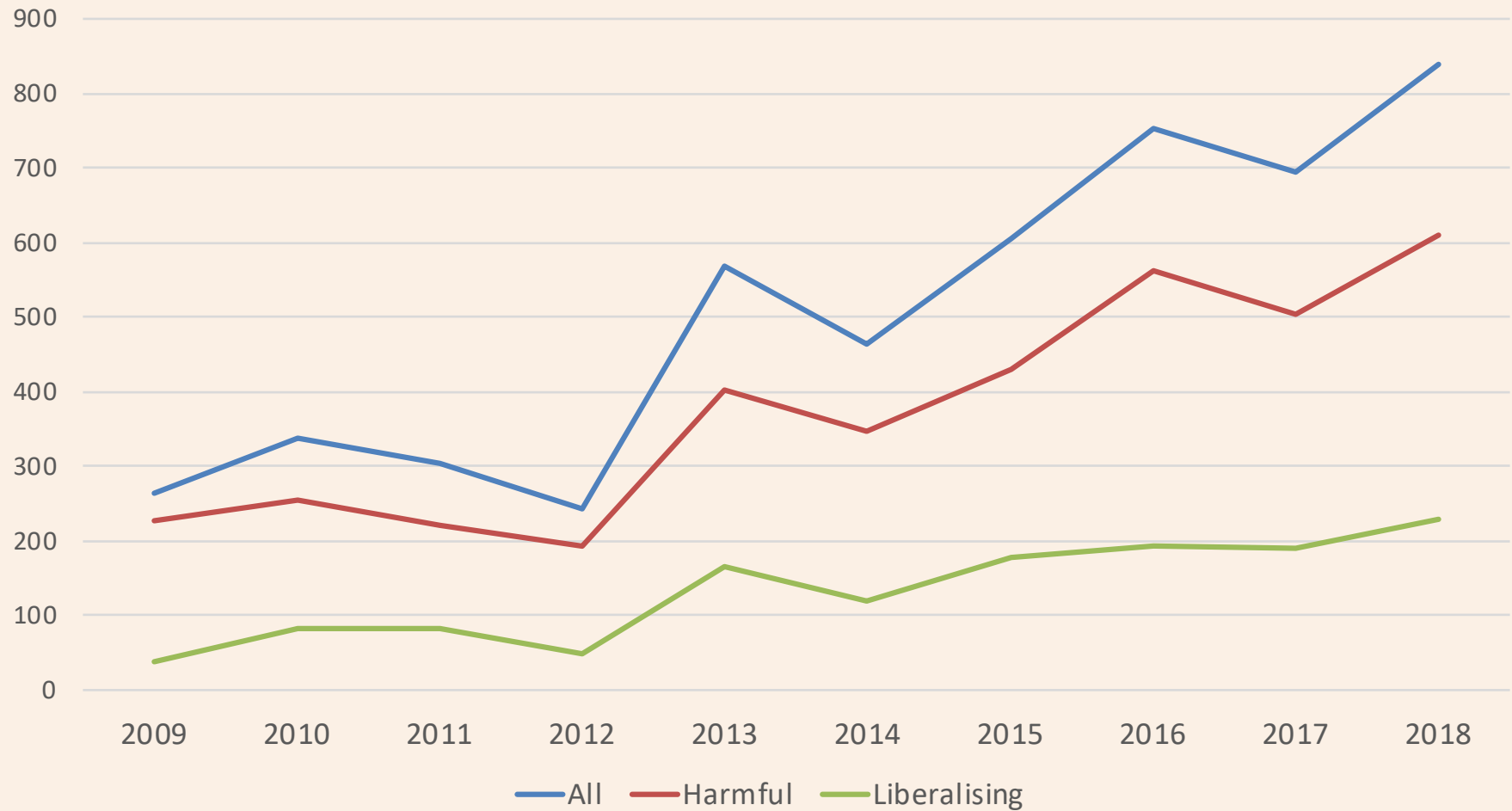
= rising use of NTM's (despite Trump)  
(share of trade-distorting policies, 2009-17)



Source: Global Trade Alert



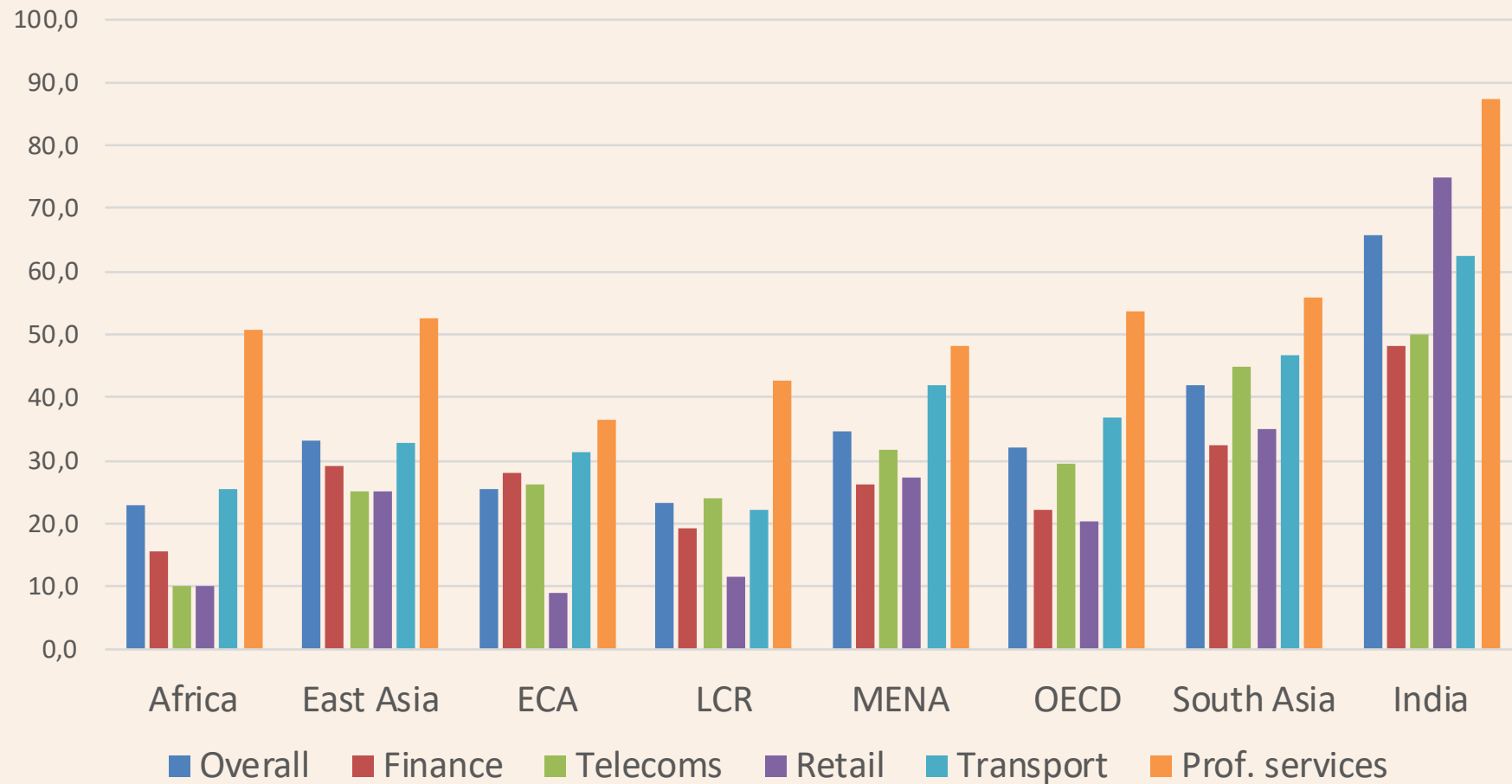
# 2018 > any post-crisis year (annual number of measures taken)





# Services trade restrictions....

STRIs by region and services sector (late 2000s)



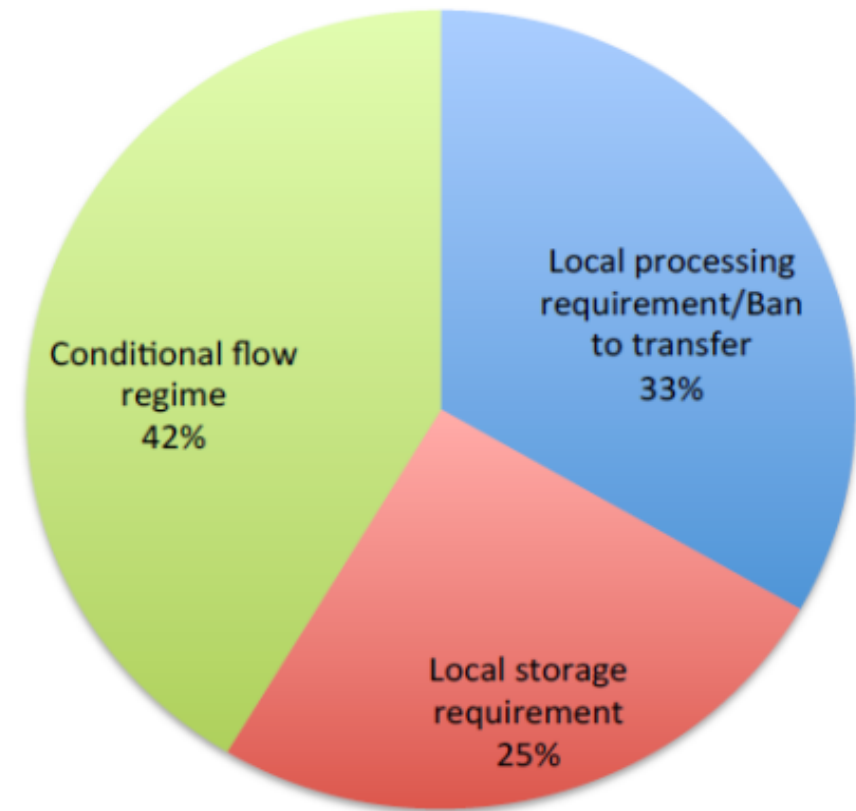
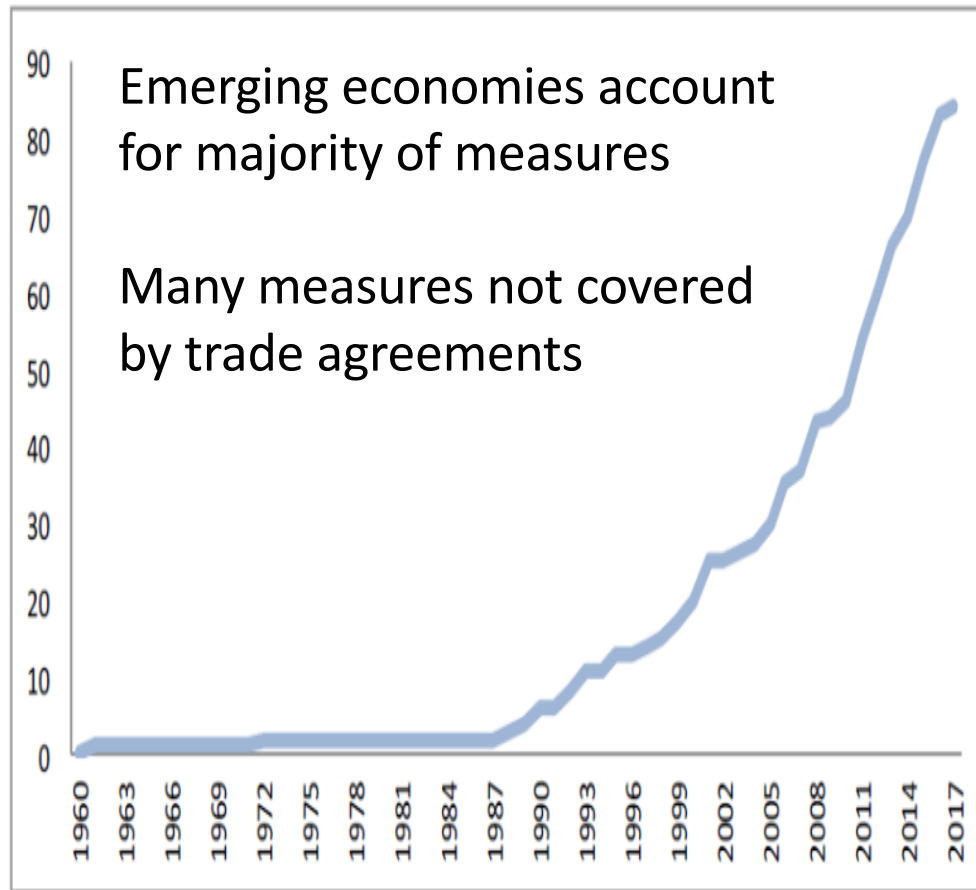


# ... and restrictions on digital trade

(> data flows: content access, access to source code, nat'l encryption, e-payment restrictions)

### Number of new measures

### By type (2017)







# Two related challenges

1. Dealing with sources of trade/competition tensions that give rise to negative spillovers
  - An old agenda – e.g., subsidies: discriminatory policies that call for more reciprocity
    - From first-difference reciprocity to absolute reciprocity (Trump)
  - A ‘newer’ agenda: nondiscriminatory policies (regulation, services, digital economy) that call for different approaches
    - Reduce costs of policy heterogeneity by agreeing on good regulatory practices and international regulatory cooperation
    - Deliberation and negotiation of agreements that address concerns of citizens reflected in national regulatory regimes--e.g., data privacy and security; safety; environmental/social standards
2. Development: balancing national policies against spillovers



## WTO: missing in action...

- In part as a result of WTO working practices:
  1. Consensus (ab)used to block regular WTO activities, including deliberation/discussion
  2. Special and differential treatment (SDT): Development differences are a real issue, but GATT-type SDT arguably outdated and ineffective
- Factor underlying increased unilateral use of trade policy and negotiation of new PTAs that cover e-commerce, investment policy, services and regulatory cooperation
- PTAs are useful but are discriminatory and exclusionary. As a result:
  1. Do not address major sources of international spillovers (subsidies; 'make it here' policies & investment incentives)
  2. Have limited impact in reducing costs of regulatory differences—i.e. in reducing fragmentation



## Bertelsmann Foundation report: six (process) recommendations

1. Policy dialogue: identify and rank-order systemic/spillover impacts of non-tariff policies
2. Foster substantive deliberations in WTO Committees
3. Facilitate small(er) group open plurilateral initiatives on new issues – perhaps leveraging dimensions of trade agreements
4. Bolster the knowledge support function of the Secretariat
5. Regular review of organizational performance
6. Revisit/revise outreach: connect better to stakeholders, improve/deepen engagement with and by business community



# Plurilateral initiatives

- Plurilateral Agreements under the WTO (note the caps)
  - Main example: Government Procurement Agreement
  - Permits discrimination; requires consensus
- Open plurilateral agreements (no caps): critical mass agreements (MFN)
  - Information Technology Agreement, Telecom Reference Paper (GATS)
  - Groups discussing four subjects post MC11, incl. e-commerce
- Versus: Non-WTO multi-/plurilateral agreements/cooperation
  - Many examples on regulatory matters: Good Regulatory Principles (horizontal); sectoral cooperation



## Is market access linkage helpful?

- If aim is reducing regulatory heterogeneity and improving achievement of regulatory goals, why do this in a trade agreement?
- Narrative of trade community: to reduce regulatory “barriers” to trade
  - This counterproductive with civil society—and regulators
- Deeper trade agreements need to help regulators do their job (i.e. improve national welfare) through greater international cooperation
- Avoiding market access linkages (conditionality) may be a necessary condition for regulatory cooperation



## Open plurilateral agreements (OPAs)

- Cooperation among a group of countries
  - Means to address consensus / development constraints
  - But also means to recognize differences in priorities and preferences
- Open to all WTO members
- Need not involve market access cross-issue linkages
- Goes beyond good practice principles – substantive agreements that address specific problems relevant to the trading system
- May be severable – i.e., non-binding. Sovereignty is retained; an agreement need not constitute hard law
- NB: Not WTO Art. II:3 Plurilateral Agreements—OPAs are not designed to be discriminatory in their implementation



# Design elements of OPAs

- Build on sectoral examples of deep regulatory cooperation: civil aircraft safety; sustainable forestry
- Aim: reduce trade costs and better realize regulatory goals
- Flexibility in how this pursued: mutual recognition / equivalence / international standardization
- Principles: open; MFN; severable (non-binding); club-based (no consensus); reciprocity (within issue linkage).
  1. MFN does not mean no conditionality
  2. Non-binding does not mean best endeavors
    - Instead of soft law, hard work: engagement; dialogue; reason-giving
    - Need to have interests/stakeholders who care: OPAs entail costly commitments—the expected return must justify costs to the parties
  3. No SDT: Focus on good practice and assistance (à la WTO TFA)
    - Countries that do not wish to join, need not
    - Developing countries wishing to join must be given assistance



# Why pursue this in the WTO?

- WTO is the global apex trade organization
  - Regulatory cooperation already happening but is piecemeal, not necessarily transparent, and often closed (e.g., bilateral MRAs, PTAs)
- Regulatory differences are a trade issue—and WTO OPAs can reduce trade costs...in ways that addresses sovereignty concerns
- Secretariat support:
  - Transparency in process and implementation—incl. for non-parties
  - Ensure that accession/multilateralization is real, not just talk
  - Technical assistance (on request) (build on TFA precedent)
- OPAs as a tool to revisit existing conflict resolution/enforcement technologies
  - E.g., require reason-giving; third party review (TFA precedent)
- OPAs as a mechanism to re-vitalize the WTO





# What can OPAs be used for?

- Issues where free riding is not a binding concern. Examples:
- Address trade/transaction costs of regulatory differences
  - Product standards (TBT/SPS)
  - Rules of origin
  - Services domestic regulation (ongoing post MC11)
  - Data privacy
  - E-commerce (ongoing post MC11)
  - Expand membership of mutual recognition agreements
  - Equivalence regimes (sectoral)
- Blockchain clubs (regulatory compliance)
- GVC governance – public-private partnerships to address weak link/coordination problems
- Transparency in procurement; competition; investment .... (“Singapore issues”)



## OPAs, sovereignty and democratic legitimacy

- Frequent argument (Rodrik & others): Global markets require global regulation which (i) we don't have; and (ii) if we could, would undercut national sovereignty/values
  - Implication: back to shallow integration to ensure policy space
- This is throwing out the baby with the bathwater
- For inclusive growth need 'thicker, discursive rules that bolster regulatory capacity & improve outcomes
- Sector-by-sector regulatory cooperation – OPAs – can do so while ensuring democratic legitimacy
  - Severability ensures regulators remain accountable at national/regional level