

Services Domestic Regulation

Rationale, Potential Economic Benefits, Practice in Regional Trade Agreements

ORIGIN AND PURPOSE OF THE NEGOTIATIONS

Services trade has grown considerably in the past decade and is estimated to now account for around half of global trade. At the same time, the 2019 WTO World Trade Report found that the costs of trading services are about twice as high as trade costs for goods. A significant portion of these costs are attributable to regulatory divergence, as well as opaque regulations and cumbersome procedures.

WTO members are free to regulate their services sectors to pursue their domestic policy objectives. Nevertheless, the General Agreement on Trade in Services (GATS) recognizes that such regulations may affect trade in services.

Through the WTO Joint Initiative on Services Domestic Regulation, an open-ended and inclusive process, a group of more than 60 WTO members have committed to develop disciplines to mitigate the unintended trade restrictive effects of measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards.

WTO members can work towards better regulatory processes while realizing any domestic policy objectives they may seek to achieve. Disciplines for the good governance of services markets are indeed compatible with a variety of regulatory systems and approaches.

The disciplines are also aligned with international instruments of good regulatory practice, such as the OECD Recommendation on Regulatory Policy and Governance, the APEC-OECD Integrated Checklist on Regulatory Reform, and the World Bank Global Indicators of Regulatory Governance.

Many WTO members, at different levels of development, have already followed these instruments to tailor their own domestic regulatory reforms. The adoption of the disciplines within the WTO can contribute to promoting and consolidating national reforms, while supporting the growth of domestic services sectors.

WTO members currently participating in the Initiative represent more than 70% of global services trade. This high level of engagement will give the disciplines a significant degree of application worldwide. The disciplines will become a meaningful reference point for countries aiming to undertake domestic regulatory reforms.

“Transparency is pivotal to facilitating trade. Procedures may be complicated and lengthy for good reasons, but there is no good reason for them to be unclear and non-transparent. Providing information contributes to more efficient procedures and reduced trade costs, by making cross-border business transactions more predictable in terms of time and costs.”

Making Regional Integration Work- Company Perspectives on Non-Tariff Measures in Arab States (2018),
International Trade Centre (ITC)

“As competitiveness of the services sector often depends on the prevailing policies and regulatory practices, growth potential can be accelerated by more inclusive participation of the private sector in national, regional and international policy making processes.”

COMESA Business Council (2020)

“Companies complained that obtaining, filling and submitting the large number of official documents required for their trading operations costs them a considerable amount of time and resources, which could otherwise be put to business development and expansion. The report recommends that a review of all documents be undertaken with the aim of streamlining and reducing the number of forms used by exporting and importing companies.”

Indonesia: Company Perspectives -Country Report (2016),
International Trade Centre (ITC)

THE WTO JOINT INITIATIVE ON SERVICES DOMESTIC REGULATION: KEY QUESTIONS

WHO?

In 2017, 59 WTO members signed a Joint Ministerial Statement (WT/MIN(17)/61), in which they reaffirmed their commitment to advancing negotiations on domestic regulation.

In a second Joint Ministerial Statement (WT/L/1059), issued in 2019, the signatories committed to finalizing the negotiations by the Twelfth WTO Ministerial Conference. Beyond those WTO members already committed to an outcome¹, many more are actively participating in the discussions.

The Initiative remains open, transparent, and inclusive. All WTO members can participate at any stage in the process. Negotiations are now at an advanced stage and it is most likely that a successful outcome will be achieved in the near future.

WHAT?

The disciplines apply to measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards affecting trade in services.

The focus of the disciplines lies on measures that are closely linked to the process of authorization to supply a service. They aim to ensure that the existing market access and national treatment commitments are not nullified by opaque and complex authorization procedures.

The disciplines provide built-in flexibilities to preserve space for differences in WTO members' regulatory capacity and approaches, for example, by allowing participants to implement certain obligations "to the extent practicable", or simply "encouraging" them to take certain actions.

The disciplines apply to those sectors where participants have undertaken commitments in their GATS Schedules of specific commitments. A possibility is foreseen for members to voluntarily expand the application of the disciplines to additional sectors.

Developing economies participating in the negotiations can delay the application of specific provisions in sectors in which they face implementation difficulties. The use of transitional periods would allow them to make any necessary adjustments to their domestic regulatory frameworks.

Domestic Regulation Disciplines and WTO Members' Policy Space

- The disciplines do not circumscribe participants' right to regulate in pursuing their domestic policy objectives.
- The disciplines do not focus on the substance of the regulation itself and are largely limited to procedures for obtaining authorization to supply services.
- Participants remain free to apply any market access and national treatment limitations inscribed in their GATS Schedules.

¹ Albania, Argentina, Australia, Brazil, Canada, Chile, China, Colombia, Costa Rica, El Salvador, the European Union, Hong Kong China, Iceland, Israel, Japan, Kazakhstan, Republic of Korea, Liechtenstein, Mauritius, Mexico, Moldova, Montenegro, New Zealand, Nigeria, North Macedonia, Norway,

Proposed Disciplines on Domestic Regulation - A Snapshot

TRANSPARENCY

- Publish and make available information required to comply with requirements and procedures for authorization, including through electronic means;
- Establish appropriate mechanisms for responding to enquiries from service suppliers;
- Engage stakeholders by publishing proposed laws and regulations, providing opportunity for comments from interested persons, and considering comments received.

LEGAL CERTAINTY AND PREDICTABILITY

- Establish indicative timeframes for processing applications;
- Process applications in a timely manner;
- Provide information on the status of applications;
- Allow applicants to correct minor deficiencies in incomplete applications and identify additional information required;
- Inform applicants of reasons for rejection of applications and allow resubmission;
- Allow authorization once granted to enter into effect without undue delay;
- Allow reasonable time between publication of laws and regulations and date of required compliance by service suppliers;
- Hold examinations at reasonably frequent intervals.

REGULATORY QUALITY AND FACILITATION

- Require applicants to approach only one competent authority to obtain authorization;
- Permit submission of applications at any time throughout the year, or at least, allow reasonable periods of time for submission;
- Accept electronic applications and authenticated copies of documents;
- Ensure that authorization fees are reasonable, transparent, and do not in themselves restrict the supply of service;
- Support professional bodies wishing to establish dialogues on issues relating to recognition of professional qualifications;
- Ensure that competent authorities reach their decisions in a manner independent from services suppliers;
- Consolidate relevant information on a single online dedicated portal;
- Develop technical standards through open and transparent processes;
- Base measures relating to authorization on objective and transparent criteria;
- Ensure that procedures are impartial, adequate and do not unjustifiably prevent fulfilment of authorization requirements;
- Ensure that authorization measures do not discriminate between men and women.

Least-developed countries participating in the negotiations are not required to apply the disciplines until they graduate from LDC status and can opt for transitional periods at that time.

HOW?

Participating members have agreed to incorporate the final set of disciplines into their respective GATS Schedules as "additional commitments" pursuant to GATS Article XVIII. GATS Article XVIII allows WTO members to negotiate commitments regarding measures on qualifications, standards, or licensing matters.

The disciplines will complement the existing specific commitments undertaken by participating members in their respective GATS Schedules. They will not affect any existing rights and obligations under the GATS or any other WTO Agreements.

The disciplines will become binding only for those WTO members who inscribe them into their GATS Schedules. They will be applied on a most-favoured nation basis, meaning that services suppliers from all WTO members will be treated equally.

Paraguay, Peru, the Russian Federation, the Kingdom of Saudi Arabia, Switzerland, Chinese Taipei, Thailand, Turkey, Ukraine, the United Kingdom, and Uruguay.

A SNAPSHOT OF POTENTIAL ECONOMIC BENEFITS OF DOMESTIC REGULATION DISCIPLINES

The implementation of the domestic regulation disciplines can lead to better economic performance

Recognizing the importance of well-functioning regulatory frameworks and sound business environments to facilitate services trade, several WTO members have progressively undertaken domestic regulatory reforms to streamline authorization procedures and improve their transparency and predictability. Many of these reform aspects are captured by the disciplines that the Initiative has developed. This trend also includes economies at lower levels of income, many of which have introduced new and innovative regulatory measures as part of their national development strategies (see BOX 1 below).

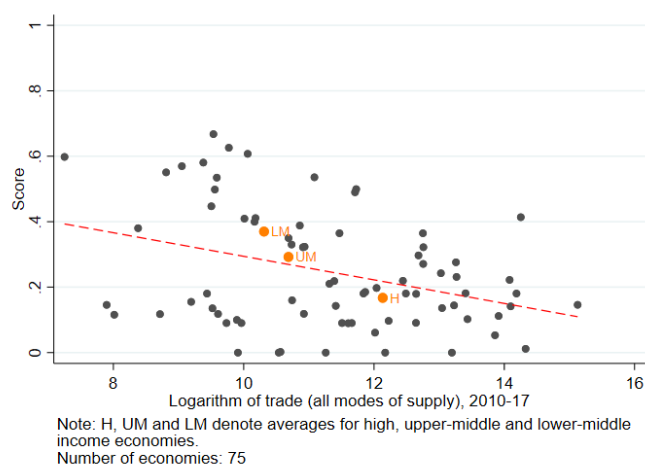
Figures 1 and 2 below relate the implementation of the disciplines developed by the Initiative with the volume of services trade and the participation in global value chains, respectively. Lower scores, tending to zero, imply that a higher number of the domestic regulation disciplines are in place in a national regulatory framework (i.e. higher level of implementation). Conversely, higher scores, tending to one, imply that fewer disciplines are in place in a national regulatory framework (i.e. lower level of implementation).

Where more domestic regulation disciplines are in place, an economy tends to trade more services

In Figure 1, the slope of the red line indicates that the implementation of the disciplines is positively associated with services trade (including all four modes of supply).

Cutting red tape in regulatory frameworks can help creating new services trade opportunities for suppliers of all sizes and women entrepreneurs. It can benefit particularly micro, small and medium-sized enterprises (MSMEs), who are typically less equipped to navigate opaque and costly requirements and procedures. Increasing services trade is critical to economic growth and development. Services create jobs, produce an efficient allocation of resources, promote firms' competitiveness, and diversify economies' output. Because services provide inputs for the whole economy, making the services sector more efficient can indirectly improve the performance of all the other economic sectors, including manufacturing and agriculture. By enhancing the efficiency and productivity of domestic services sectors, services firms' ability to compete in international markets can consequently be boosted. Economies implementing domestic regulation disciplines in their regulatory frameworks tend to participate more actively in international trade in services.

Figure 1: Correlation between the implementation of domestic regulation disciplines and volume of services trade



BOX 1 - LAO SERVICES PORTAL

The Lao Services Portal aims to increase access to information and participation in the development and application of trade related measures on services trade. It collates useful information for those seeking to supply a service, including on laws and regulations, requirements, procedures, and application forms. Registration to receive news and regular alerts is also possible.

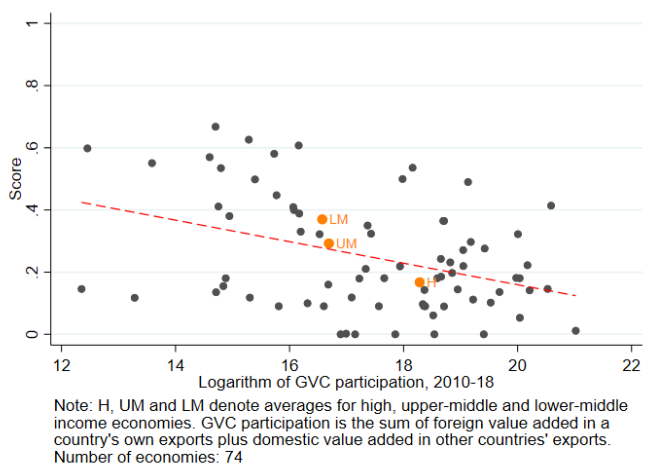
Source: <http://www.laoservicesportal.gov.la/>

Where more domestic regulation disciplines are in place, the participation in global value chains (GVCs) tends to be higher

In Figure 2, the slope of the red line indicates that the implementation of the disciplines is positively associated with the participation in GVCs.

Participation in GVCs reflects an increase in opportunities to integrate into the global economy by allowing firms, including small and medium ones, to join international production networks. The economic benefits relate to increased productivity, product sophistication, and export diversification. By making their domestic services sector more competitive, GVCs can especially support lower income economies in meeting their development goals. In order to maximise the benefits of participation in GVCs, streamlining authorization procedures, as well as enhancing the transparency and predictability of regulatory frameworks, is crucial.

Figure 2: Correlation between the implementation of domestic regulation disciplines and participation in global value chains



TRENDS IN REGIONAL TRADE AGREEMENTS (RTAs)

There is a significant degree of similarity between the domestic regulation disciplines included in recent RTAs and those developed by the WTO Joint Initiative

Figure 3: WTO members with domestic regulation disciplines in reviewed RTAs

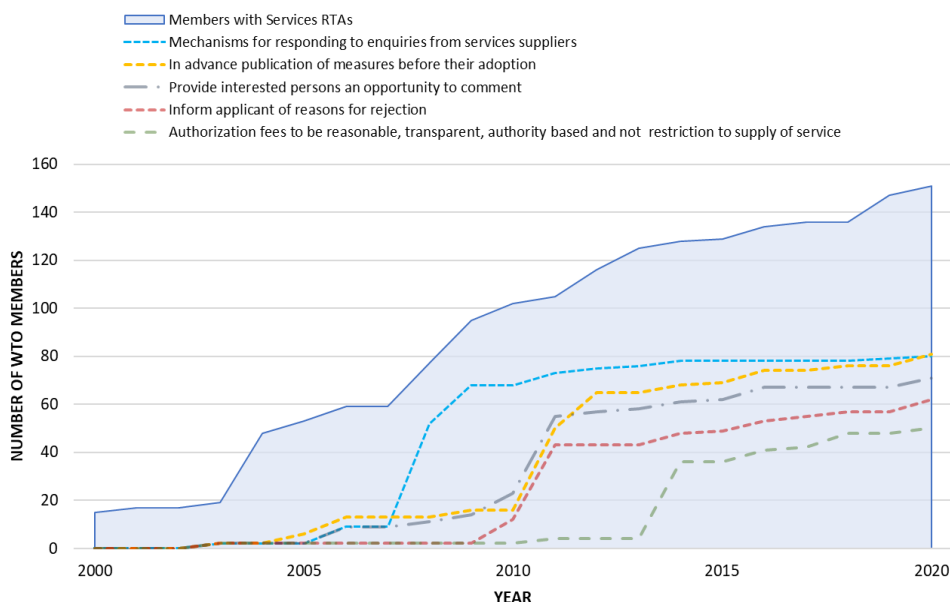
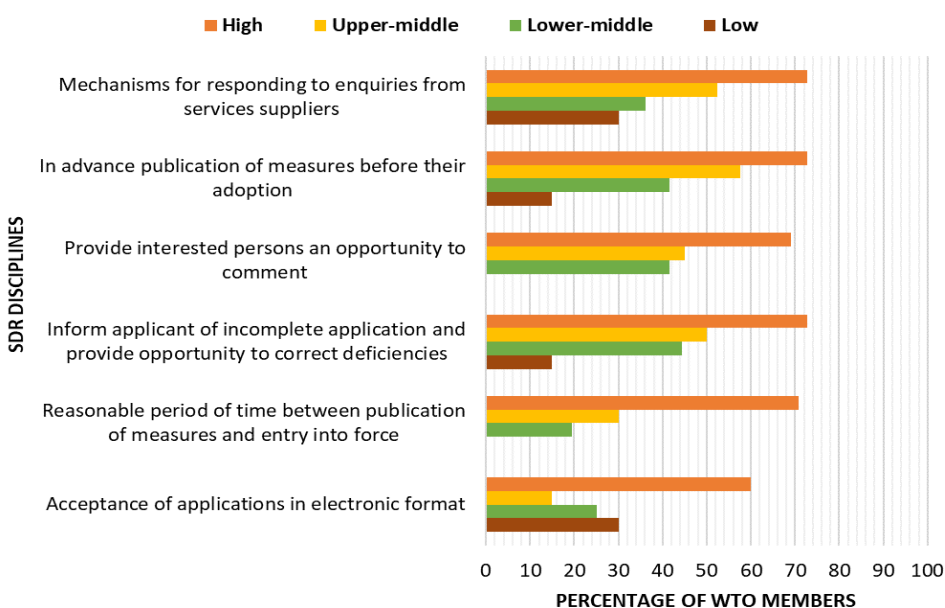


Figure 4: Percentage of WTO members with domestic regulation disciplines in reviewed RTAs, by income groups



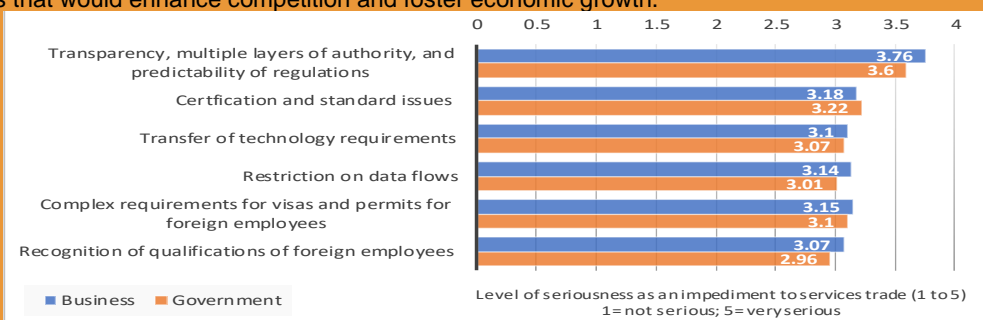
Over the last 15 years, services RTAs have moved beyond removing quantitative restrictions and discriminatory measures relating to international services trade. They are now increasingly addressing regulatory barriers and promoting good governance of services markets. By establishing domestic regulation obligations, RTAs can render national regulatory frameworks more transparent and predictable. This can help promoting competitiveness and economic diversification, and thereby boosting economic growth and development.

As of 2020, more than 70% of WTO members have concluded at least one RTA with domestic regulation provisions that go beyond the GATS. At a time when businesses ask for more transparent and predictable domestic regulatory frameworks, several recent RTAs, including those adopted by economies at lower levels of income, respond to the practical challenges that affect businesses' ability to trade (see BOX 2 below).

Increasingly, domestic regulation obligations in RTAs address three main aspects: (i) transparency, i.e. publication and availability of relevant information for service suppliers; (ii) certainty and predictability, i.e. regulatory and procedural benchmarks to be followed by competent authorities when dealing with applications for authorization to supply services; (iii) regulatory quality and facilitation, i.e. measures aiming at the adoption and dissemination of good regulatory practices. Like the disciplines developed by the Initiative, domestic regulation provisions in RTAs do not interfere with substantive requirements that regulators can develop and implement to pursue their national policy objectives.

BOX 2 – PACIFIC ECONOMIC COOPERATION COUNCIL (PECC): BUSINESS SURVEY ON IMPEDIMENTS TO SERVICES TRADE

In 2016, PECC conducted a survey of regional policies addressing businesses, governments, academics, media, and civil society. There was broad agreement that the most cumbersome barriers to trade in services are the lack of transparency, multiple layers of bureaucracy, and lack of predictability: 63% of business respondents considered the lack of transparency as a serious to very serious impediment to services trade, compared to 54% of government respondents. PECC advised governments to develop a set of regulatory principles to be applied across sectors that would enhance competition and foster economic growth.



Source: PECC International Secretariat, State of the Region 2016-2017 (2016).