



Issues in Domestic Regulations of Services: Horizontal versus Sectoral Disciplines

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Outline of the Paper

- Advantages and Constraints of horizontal vs sectoral disciplines
- Making horizontal disciplines meaningful without unduly limiting regulatory freedom
 - » *International commitments to horizontal disciplines*
 - » *Lessons from the GATS*
 - » *Specific rules – harmoniz'n and mutual recognition*
 - » *Narrowing the scope – when is an international commitment useful?*
- New service sectors: To regulate or not?
- Conclusion

Domestic Regulation of Services

- ◆ Can be a barrier to trade;
- ◆ Disciplines imposed by GATS:
 - MFN Treatment
 - NT
 - Transparency
 - Article VI

Domestic Regulatory Reform

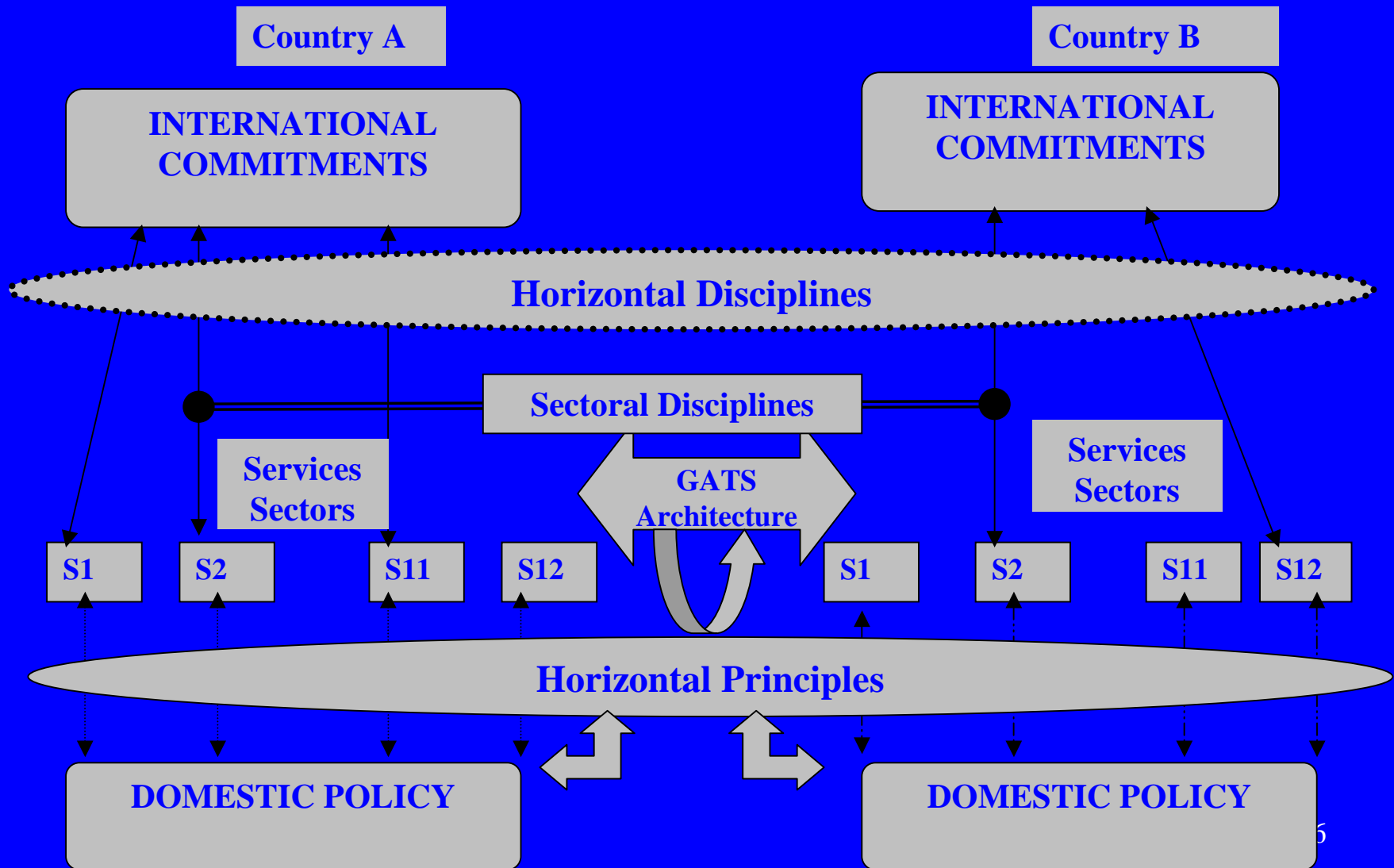
◆ Driven by:

- “the triumph of markets over governments”;
- technological change;
- globalization;
- regulatory arbitrage;
- international pressure;
- pro-reform domestic lobbying.

Role of International Commitments

- ◆ Facilitate domestic reform;
- ◆ Can be horizontal or sectoral:
 - horizontal disciplines provide greater consistency, but may be too general to be meaningful;
 - sectoral disciplines may not be sufficiently liberalizing.

Horizontal Principles: Scope of Applicability



Constraints on Applicability of GATS Disciplines

- ◆ Article VI applies to committed sectors
- ◆ Limitations on MA and NT \Rightarrow no recourse to Article VI
- ◆ How horizontal are the horizontal disciplines?
 - Implicit sectoral applicability
 - Different sets of commitments

Reasons for Regulation

◆ Market failure

» Breyer (1982), Kahn (1988), Findlay and Kim (2001)

- Market power
- Information asymmetry
- Externalities

◆ Distributive goals

◆ Horizontal nature \Rightarrow Set of common principles

Principles of Good Regulation

- Net aggregate benefit;
- Minimum necessary level to achieve objective;
- Performance-based, flexible;
- Accessibility, transparency, accountability;
- Clarity and conciseness;
- Proportionate to the problem (compliance costs);
- Enforceable.

Benefits of Horizontal Approach

- Reduced probability of regulatory capture;
- Automatic application to new sectors;
- Rules are based on economic efficiency considerations;
- Technological neutrality;
- Lead to progressive liberalization.

Problems with Horizontal Approach

- Rules too general to apply effectively to diverse sectors;
- Scope may be limited by specific industry features;
- Sectoral disciplines may have a stronger SR effect;
- Sectoral disciplines are cheaper to comply with (higher predictability);
- Possibility of a regulatory stalemate.

Horizontal Approach to Evaluation of Regulation

- ◆ Key Elements of a **Regulation Impact Statement (RIS)**:
 - » The *problem* requiring action;
 - » The desired *objectives*;
 - » Regulatory and non-regulatory *options* to achieve objectives;
 - » Cost-benefit assessment of *impact* of each option (on consumers, government, business, and community);
 - » Results of *consultations*;
 - » A *recommended option*;
 - » A strategy to *implement* and *review* the preferred option.

International Commitments to Horizontal Disciplines

- ◆ What are legitimate regulatory objectives?
 - » WTO WPDR
- ◆ Sovereign regulatory rights
 - » horizontal approach might be seen as infringement
- ◆ Application of the principles of good governance
 - » different weighting of the objectives

Proposals to Date

- Open international dialogue of regulators and competition authorities;
- Agree on areas of critical national sovereignty
 - ◆ health, safety, prudential objectives;
- Develop horizontal disciplines
 - ◆ to safeguard contestability of markets, maintaining national sovereignty in critical areas;
- Three-tiered approach:
 - ◆ key principles/disciplines bound in the interna'l agr't;
 - ◆ voluntary guidelines for domestic policymaking;
 - ◆ sector-specific standards developed by prof'l bodies etc.

Lessons from the GATS

- WPDR: Comments on the issue of horizontal disciplines
 - ◆ *Disciplines* developed for accountancy can be extended to other professional services, and perhaps beyond that;
- Article VI relates to non-discriminatory measures only
 - ◆ links with limitations on MA (Art XVI) and NT (Art XVII)
- Need for simultaneous improvement in domestic regulatory disciplines and sectoral commitments

Proposals to Strengthen Art VI

- Proportionality test

- ♦ the measure should not be more trade-restrictive than necessary to achieve a regulatory objective;

- Necessity test

- ♦ Article VI(4), not more burdensome than necessary to ensure quality of service;

- Subsidiarity test

- ♦ Regulation should be performed at the lowest level of government to achieve an objective

Summary of Proposals on HD

- Expand the scope of Article VI and Article III to require explicit statement of policy objectives;
- Clarify the concept of “quality of service”
 - ◆ may include broader social objectives;
- Limit regulation to minimum necessary level;
- General statement of competitive safeguards
 - ◆ eg Telco Annex, ABT, access to essential facilities;
- Performance-based regulation
 - ◆ using objective and transparent criteria Art VI(4)(a);
- Encourage market-based and self-regulation.¹⁷

Specific Rules - Harmonization and Mutual Recognition

- Harmonization does not seem to be a viable option;
 - ◆ lack of international standards for services
- Harmonization requires a supranational supervisor;
 - ◆ not a popular proposition
- Mutual recognition: costs and benefits
 - ◆ MR may result in trade diversion, resulting in distortions.

Narrowing the Scope of HD

- Similar disciplines apply to the similar sectors;
- Classified by the type of market failure;
 - ◆ Reference Paper on Telco can be extended to other network industries - transport, environment, energy;
 - ◆ Market power is the main type of market failure requiring international commitments; for other types -
- Generalized necessity test plus NT obligation
 - ◆ measures not more trade restrictive than necessary applied equally to domestic and foreign suppliers.

New Services: To Regulate or Not?

- “Black letter law” is too sluggish to regulate dynamic sectors;
- “Heavy-handed” approach is costly;
- Markets for new services need to mature and reveal their imperfections;
- Principles of good regulation;
- Examples of regulatory challenges:
 - ◆ consumer privacy and information protection;
 - ◆ consumer protection in cross-border disputes;
 - ◆ blurred boundaries between goods and services.

Conclusion

- Trade-off between generality and specificity;
- Possible directions of APEC activities:
 - » promoting a dialogue on the value of horizontal disciplines;
 - » evaluate desirability of international commitments vs generalized necessity test +NT;
 - » developing model commitments in the areas from the menu of options;
 - » continuing to extend commitments to services liberalization in APEC, and binding them multilaterally.

Lessons from Negotiations on Basic Telecommunications

- Telco Services Ref Paper (24 April 1996):
 - » competitive safeguards
 - ◆ preventing anti-competitive cross-subsidization;
 - ◆ access to essential facilities;
 - » Interconnection guarantees
 - ◆ non-discriminatory, transparent rules; dispute settlement body;
 - » USO
 - ◆ non-discriminatory, necessity test;
 - » Licensing criteria publicly available;
 - » Independent regulator;
 - » Efficient allocation of resources.

Extrapolation to Other Sectors

- Competitive safeguards;
- Transparency of social objectives administration;
- Transparency of licensing requirements and criteria for allocation of scarce resources;
- Independent regulator.

Lessons from Negotiations on Financial Services

- “Understanding on Commitments in Financial Services” (UR):
 - ◆ Standstill;
 - ◆ Monopoly rights;
 - ◆ Purchase by public entities;
 - ◆ Cross-border trade;
 - ◆ Commercial presence;
 - ◆ New financial services;
 - ◆ Transfer and processing of information;
 - ◆ Temporary entry of personnel;
 - ◆ Limitation on non-discriminatory measures limiting expansion;
 - ◆ NT

Lessons from Negotiations on Accountancy

» *Disciplines on Domestic Regulation in the Accountancy Sector* (CTS, Dec 1998):

- ◆ Necessity test
 - illustrative list of legitimate objectives;
- ◆ Transparency;
 - info publicly available; provision to request info on the rational for regulatory measure; opportunity to comment;
- ◆ Licensing requirements and procedures;
 - publ available, objective, not more burdensome than necessary;
- ◆ Qualification requirements and procedures;
- ◆ Technical standards
 - based on a legitimate objective; recognition of international standards