Services Domestic Regulation

Rationale and Content, Potential Economic Benefits, and Increasing Prevalence in 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.

At the margins of the 11th WTO Ministerial Conference in 2017, the Joint Initiative on Services Domestic Regulation was established with the objective of developing disciplines to mitigate the unintended trade restrictive effects of measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards.

In December 2021, a group of WTO members adopted a declaration to announce the successful conclusion of the negotiations on services domestic regulation (WT/L/1129). In the declaration, participants committed to take the necessary steps to give legal effect to the negotiated outcome by the end of 2022. All WTO members are invited to join the declaration.

A total of 70 governments, including one least-developed economy, are part of the outcome on services domestic regulation[1]. They represent 92.5% of global services trade.

The outcome on services domestic regulation brings long standing work on good regulatory practice for services within the ambit of the WTO. Since services represent the fastest growing sector of today's global economy, a set of disciplines that facilitates services trade and economic development through more transparent and predictable regulatory frameworks can be beneficial to all WTO members and can particularly benefit small businesses and women entrepreneurs.

[1] Albania, Argentina, Australia, Kingdom of Bahrain, Brazil, Canada, Chile, China, Colombia, Costa Rica, El Salvador, European Union, Georgia, Hong Kong China, Iceland, Israel, Japan, Kazakhstan, Republic of Korea, Liechtenstein, Mauritius, Mexico, Moldova, Montenegro, New Zealand, Nigeria, North Macedonia, Norway, Paraguay, Peru, Philippines, Russian Federation, Kingdom of Saudi Arabia, Singapore, Switzerland, Chinese Taipei, Thailand, Timor-Leste, Türkiye, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay.

"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)

"Services are famously where the rubber of trade meets the road of a country's domestic economic conditions. Domestic regulation of services has a significant impact on the vibrancy of trade in services and simultaneously in trade in goods, since services such as telecommunications, transport, financial, and energy are inputs to the manufacturing process."

Regulatory Assessment Toolkit: A Practical Methodology for Assessing Regulation on Services Trade and Investment, World Bank (2014)

THE JOINT INITIATIVE ON SERVICES DOMESTIC REGULATION: KEY QUESTIONS

WHAT?

The disciplines contained in the Reference Paper on Services Domestic Regulation 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 seek to ensure that existing market access and national treatment commitments are not nullified by opaque and complex authorization procedures. They aim to facilitate trade in services.

The disciplines provide built-in flexibilities for their implementation, in order to preserve space for differences in WTO members' regulatory capacity and approaches. For example, they allow participants to implement certain obligations "to the extent practicable", or simply "encourage" their competent authorities to take certain actions.

The disciplines apply to 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 that adopt the disciplines can delay the application of specific provisions in sectors in which they face implementation difficulties for up to 7 years. The use of transitional periods would allow them to make any necessary adjustments to their domestic regulatory frameworks.

Least-developed countries participating in the Initiative are not required to apply the disciplines until their graduation from LDC status and can designate the necessary transitional periods at that time.

The Disciplines on Services Domestic Regulation - In Brief

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.

HOW?

Participating members have agreed to incorporate the disciplines on domestic regulation into their respective GATS schedules as "additional commitments" pursuant to GATS Article XVIII. This provision allows WTO members to negotiate commitments regarding measures on qualifications, standards, or licensing matters.

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

Domestic Regulation Disciplines and WTO Members' Policy Space

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

The disciplines will become binding only on 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 able to equally benefit from them.

WHY?

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.

Given their close linkage with good regulatory practice recognized at the international level, the adoption of the disciplines on domestic regulation within the WTO can contribute to promoting and consolidating internal reforms, while supporting the growth of domestic services sectors.

WORTH NOTING

For the first time, a WTO negotiated text contains a provision on non-discrimination between men and women in authorization procedures for service suppliers. The objective of this discipline is to support women's economic empowerment and boost their participation in services trade.

A SNAPSHOT OF POTENTIAL ECONOMIC BENEFITS OF SERVICES DOMESTIC REGULATION

The application of the domestic regulation disciplines is associated with greater 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. Building on international instruments of good regulatory practice – such as the APEC-OECD Integrated Checklist on Regulatory Reform (2005), the OECD Recommendation on Regulatory Policy and Governance (2012), and the World Bank Global Indicators of Regulatory Governance (2018), the disciplines that the Initiative has developed capture many of these reform aspects. 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).

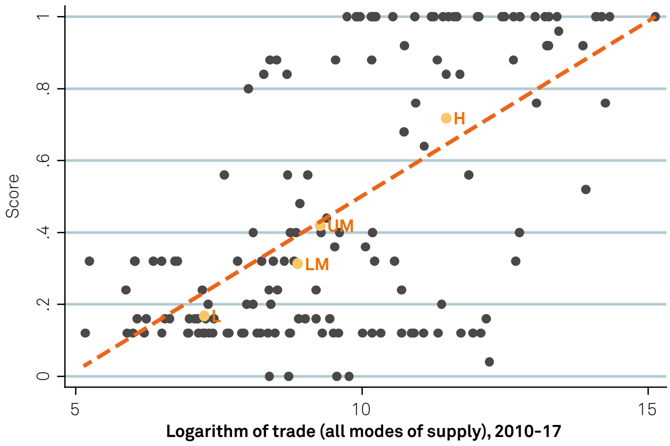
Figures 1 and 2 below relate the application of the disciplines developed by the Initiative with the volume of services trade and the participation in global value chains, respectively. Higher scores, tending to one, mean that a higher number of the domestic regulation disciplines are in place in a national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



Note: H, UM, LM and L denote the average for high, upper-middle, lower-middle and low income economies.
Number of economies: 150

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.

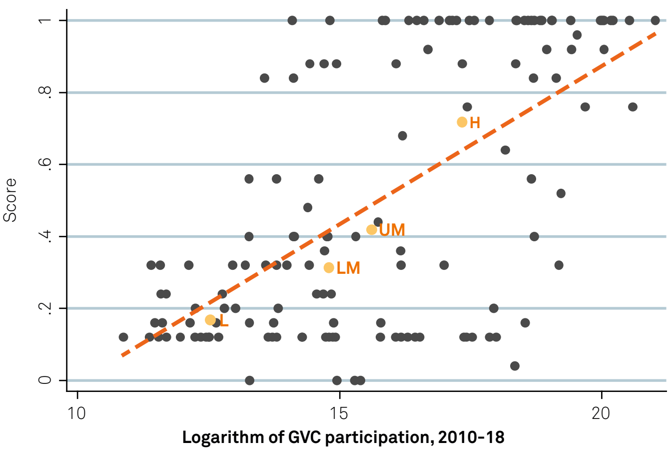
Source: http://www.laoservicesportal.gov.la/

Where more domestic regulation disciplines are in place, 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 promoting employment and generating positive spill over effects, including knowledge and technological progress, GVCs can especially support lower income economies in meeting their development goals. As GVCs rely intensively on services, streamlining authorization procedures and enhancing the transparency and predictability of regulatory frameworks, is crucial.

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



Note: H, UM, LM and L denote the average for high, upper-middle, lower-middle and low income economies.
Number of economies: 136

SERVICES DOMESTIC REGULATION AND REGIONAL TRADE AGREEMENTS (RTAs)

Over time, RTAs have started addressing trade impediments resulting from a lack of transparency and procedural red tape. Several "new generation" agreements – adopted across all income groups and regions of the world – include a comprehensive set of regulatory obligations largely equivalent to the domestic regulation disciplines developed by the Initiative.

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

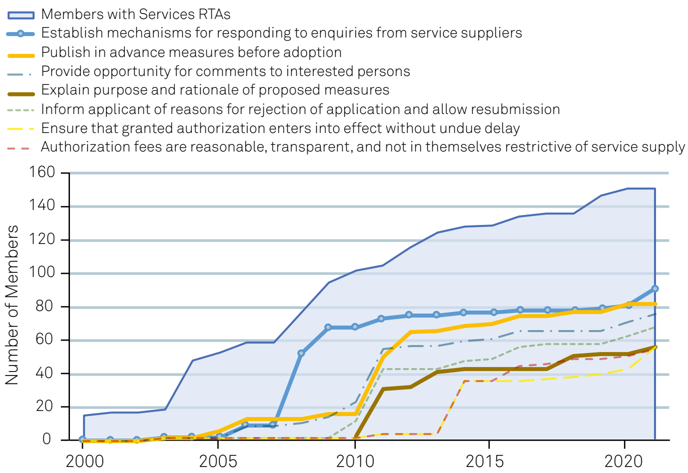
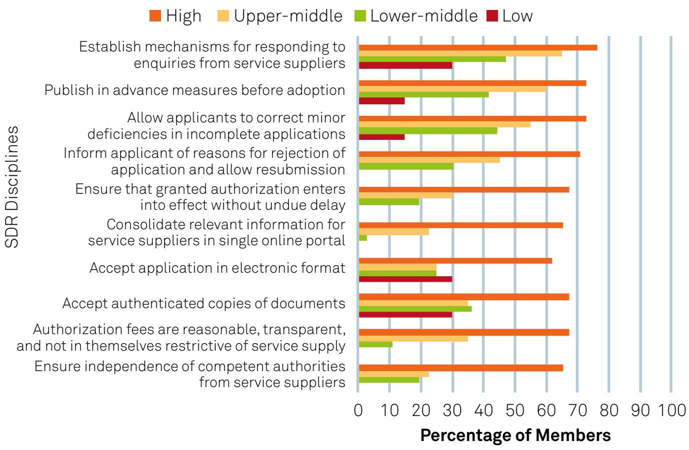


Figure 4: Percentage of WTO members with domestic regulation disciplines in reviewed RTAs, by income groups



Over the last 15 years, "new generation" agreements have moved beyond removing quantitative restrictions and discriminatory measures relating to international services trade. They increasingly aim to address regulatory obstacles and cutting procedural red tape. By promoting the good governance of services markets, RTAs can render national regulatory frameworks more transparent, predictable, and conducive to economic activities, and thereby further boost growth and development.

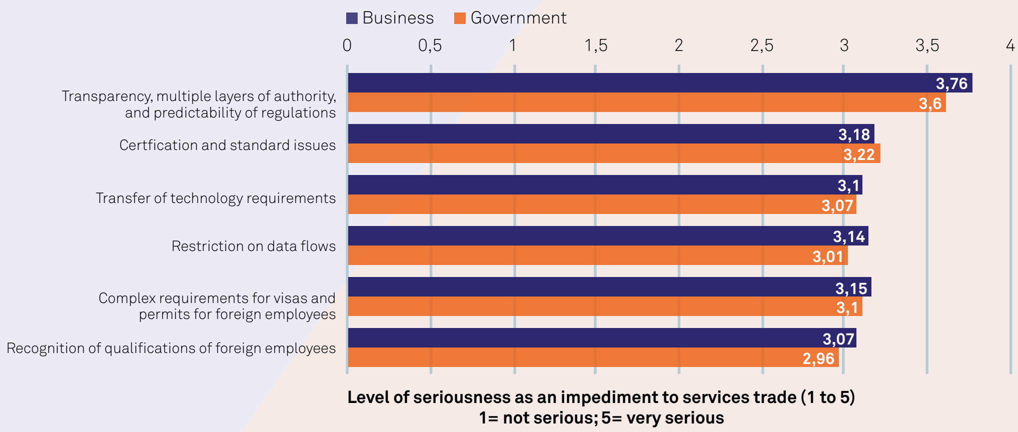
Overall, as an increasing number of RTAs covering services have been concluded in the past fifteen to twenty years, also the adoption of GATS-plus regulatory provisions has accelerated over time. As of 2020, 112 WTO members have concluded at least one RTA with obligations equivalent to the domestic regulation disciplines designed by the Initiative. Economies at all levels of income and across all regions are nowadays involved in this practice, with only low-income economies to a limited extent. This trend is not only reflected among the Initiative's participating Members, but it also encompasses economies that are currently not part of the outcome on services domestic regulation.

At a time when businesses ask for more transparent and predictable domestic regulatory frameworks, more and more RTAs seek to respond to the practical challenges that affect businesses' ability to trade (see BOX 2 below). 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.

For more information on the research findings in this Factsheet, see "Services Domestic Regulation – Locking in Good Regulatory Practices", WTO Staff Working Paper, ERSD-2021-14 (September 2021)

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).