

Services Domestic Regulation

Rationale, Potential Economic Benefits, RTA Practice

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 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. Indeed, as the broad participation in the Initiative denotes, disciplines on good regulatory practice are 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 turn into 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 (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 their work on domestic regulation disciplines 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. As negotiations are now at an advanced stage, it is most likely that the Initiative will deliver an outcome 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 lies on measures that are closely linked to the process of authorization to supply a service. The disciplines do not aim to address measures with which suppliers have to comply independently from the authorization procedure.

The disciplines provide built-in flexibilities to preserve space for differences in 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. A possibility is foreseen for Members to voluntarily expand the application of the disciplines to additional sectors.

Developing country Members participating in the Initiative can delay the application of specific provisions in sectors in

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 schedules.
- The disciplines ensure that the existing market access and national treatment commitments are not nullified by opaque and complex authorization procedures.

Proposed Disciplines on Domestic Regulation - A Snapshot

TRANSPARENCY

- Prompt publication and availability of information necessary to comply with requirements and procedures for authorization;
- Appropriate mechanisms for responding to enquiries from service suppliers;
- Stakeholder engagement, including through publication of proposed laws and regulations; opportunity to comment for interested persons and commitment to consider comments received.

LEGAL CERTAINTY AND PREDICTABILITY

- Availability of written information on decision of application;
- Notification to applicants of what information is missing in application;
- Information on reasons for rejection of application;
- Reasonable time between publication of laws and regulations and required compliance by service suppliers;
- Examinations to be held at reasonably frequent intervals;
- Authorization, once granted, to enter into effect without undue delay.
- Technical standards to be developed through open and transparent processes.

REGULATORY QUALITY AND FACILITATION

- Measures to be based on objective and transparent criteria;
- Authorization procedures to be impartial and adequate to comply with requirements; authorization procedures not to unjustifiably prevent fulfilment of requirements;
- Independence of competent authorities' decisions from services suppliers;
- Only one competent authority to be approached for obtaining authorization;
- Applicants to be permitted to submit applications throughout the year;
- Authorization fees to be reasonable and transparent;
- Competent authorities encouraged to accept electronic applications and authenticated copies.

which they face implementation difficulties. The use of transitional periods would allow them to make any necessary adjustments to their domestic regulatory frameworks.

Least-developed country Members participating in the Initiative are not required to apply the disciplines until graduation 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 Schedules. They will not affect any existing rights and obligations under the GATS or any other WTO Agreements.

The disciplines will become binding only on those WTO Members who inscribe them into their GATS Schedules. Nevertheless, they will be applied on a most-favored nation basis.

¹ Albania, Argentina, Australia, Brazil, Canada, Chile, China, Colombia, Costa Rica, El Salvador, the EU and Member States, Hong Kong China, Iceland, Israel, Japan, Kazakhstan, Republic of Korea, Liechtenstein, Mexico, Republic of

Moldova, Montenegro, New Zealand, Nigeria, North Macedonia, Norway, Paraguay, Peru, the Russian Federation, the Kingdom of Saudi Arabia, Switzerland, Chinese Taipei, Turkey, Ukraine, the United Kingdom, and Uruguay.

A SNAPSHOT OF POTENTIAL ECONOMIC BENEFITS OF DOMESTIC REGULATION DISCIPLINES

The application of the domestic regulation disciplines is positively associated with better economic performance

Recognizing the importance of well-functioning regulatory frameworks to facilitate services trade, several WTO Members have progressively been undertaking domestic regulatory reforms to streamline the authorization procedures and make them more transparent and predictable. 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 (for an example see BOX 1).

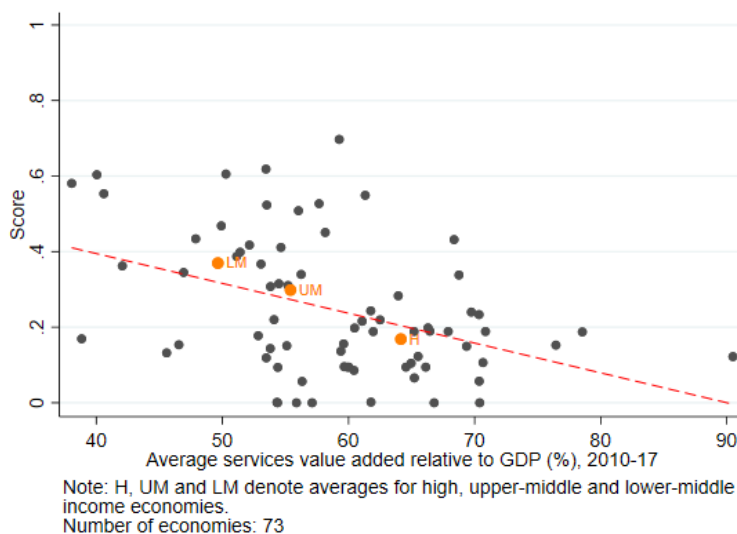
A positive correlation can be observed between the application of domestic regulation disciplines and better economic performance. Figures 1 and 2 below relate the application of the disciplines developed by the Joint Initiative with services value added to Gross Domestic Product (GDP) and participation in Global Value Chains (GVC), respectively. Lower scores, tending to zero, imply that a higher number of the domestic regulation disciplines are in place (i.e. higher level of compliance). Conversely, higher scores, tending to one, imply that fewer disciplines are in place (i.e. lower level of compliance).

Where more domestic regulation disciplines are in place, the relative size of the services sector is likely to be larger

In Figure 1, the slope of the red line indicates that the application of the disciplines is positively associated with the relative size of a country's services sector.

Increasing the size of the domestic services sector is critical to achieve growth and development. Services create jobs, promote export diversification, provide essential public services (e.g. health, education, sanitation) and inputs to the whole economy. Contributing more significantly to growth and employment than the manufacturing sector, services offer an inclusive, gender- and environment-friendly development path for many low-income economies. Recent trends show that services are constantly expanding, providing further opportunities for domestic firms to enter new export markets and hence provide alternative strategies for development.

Figure 1: application of domestic regulation disciplines and services value added



BOX 1 - LAO SERVICES PORTAL

The Lao Services Portal was introduced with the objective of increasing access to information and participation in the development and application of trade related measures on services trade. It contains access to relevant laws and regulations, information on requirements and procedures, application forms, news, and other information that may be needed by those seeking to supply a service. There is also a possibility to register on the website to regularly receive updated information.

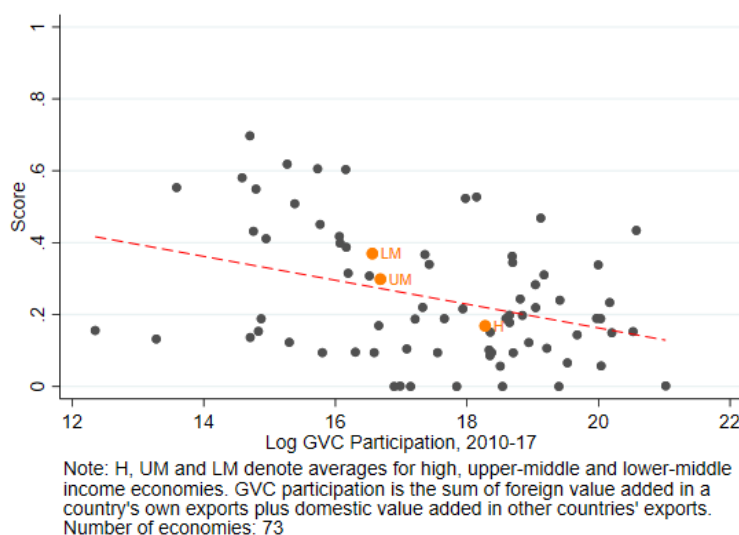
Source: <http://www.laoservicesportal.gov.la/>

Where more domestic regulation disciplines are in place, the participation in GVCs is likely to be higher

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

Participation in GVCs reflects a growth in opportunities to integrate into the global economy by allowing firms to join international production networks. The economic benefits associated with participation in GVCs relate to increased productivity, sophistication, and diversification of exports. Streamlining authorization procedures, as well as enhancing the transparency and predictability of regulatory frameworks, is crucial to maximise the benefits of participation in GVCs. GVCs can especially help developing economies to promote development efforts by improving the competitiveness of their domestic services sector.

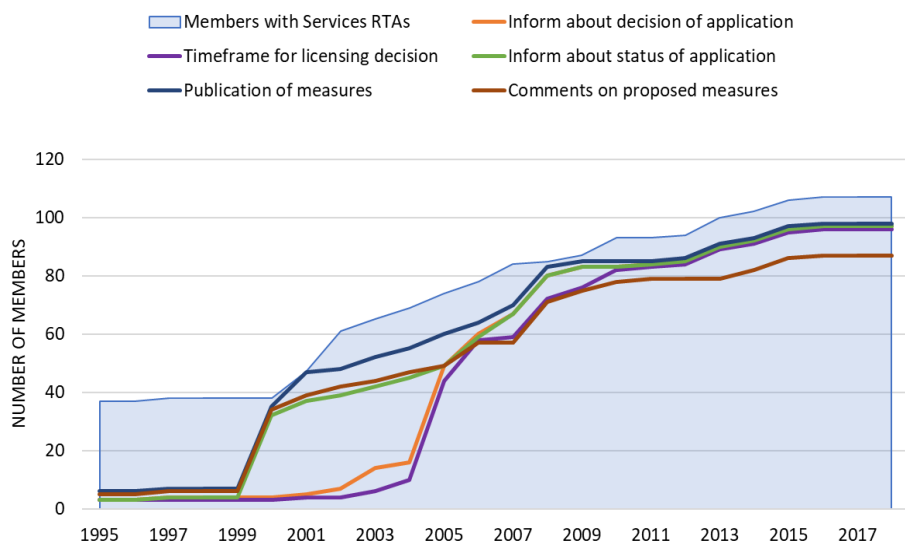
Figure 2: application of domestic regulation disciplines and Global Value Chains



TRENDS IN REGIONAL TRADE AGREEMENTS

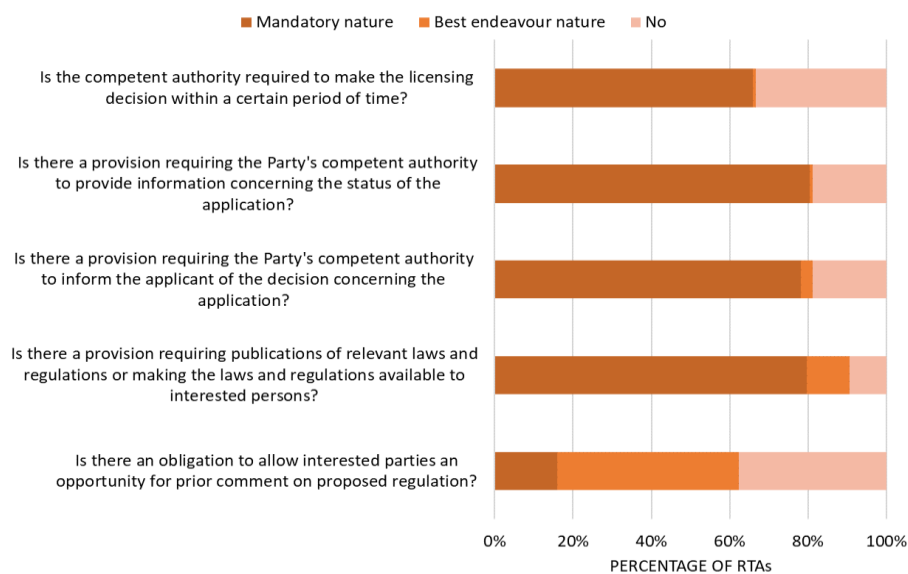
There is a significant degree of similarity between the domestic regulation disciplines included in recent RTAs with those developed by the WTO Joint Initiative

Figure 3: WTO Members with notified RTAs including domestic regulation disciplines



Source: WTO Secretariat calculations based on data extracted from Gootiz et al. (2019) (based on 138 RTAs notified to the WTO from 1995 to 2018)

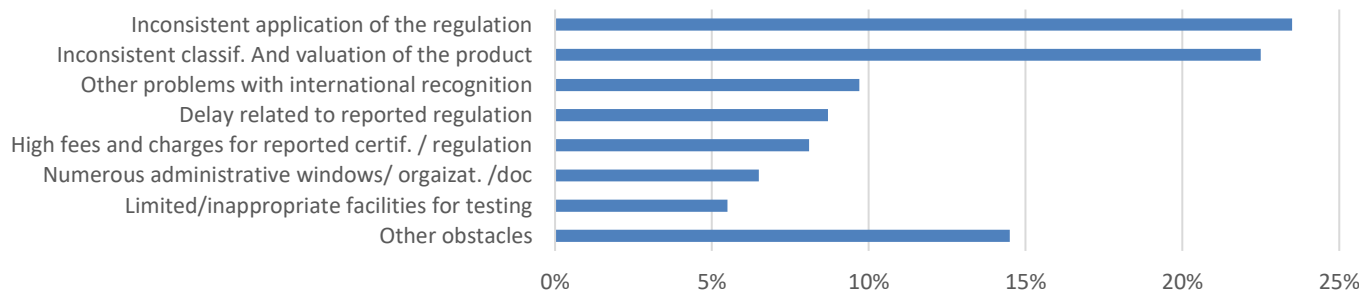
Figure 4: Domestic regulation disciplines in notified RTAs of WTO Members



Source: WTO Secretariat calculations based on data extracted from Gootiz et al. (2019) (based on 138 RTAs notified to the WTO from 1995 to 2018)

BOX 2 – ITC BUSINESS SURVEY IN JORDAN (2018)

The ITC NTM Program, launched in 2010, conducts business surveys on non-tariff measures, procedural obstacles and trade-related business environment inefficiencies. The ITC has found that about 88% of the non-tariff measures that hinder business in Jordan relate to procedural obstacles. The main types of procedural obstacles encumbering business are:



Source: ITC, NTM Business survey in Jordan, 2015-2016

Over the last 15 years, services RTAs have moved beyond removing quantitative restrictions and discriminatory measures from international services trade. They are now increasingly addressing regulatory barriers and promoting good governance of services markets.

As of 2018, 103 WTO Members notified to the WTO at least one RTA with domestic regulation provisions. Amongst those, there are 54 high-income, 28 upper-middle, 17 lower-middle, and 4 low income economies. At a time when businesses ask for increased transparency and predictability of 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 (for an example of such challenges see BOX 2).

Increasingly, obligations in RTAs address two main aspects: (i) transparency of domestic regulation, i.e. availability of relevant information for service suppliers; (ii) administration of domestic regulation, i.e. requirements that regulators have to observe when processing applications from applicants seeking to supply services. Like the domestic regulation disciplines developed by the Initiative, most RTAs do not aim to impact substantive requirements that regulators can develop and implement to pursue domestic policy objectives.