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**World Trade Organization**

Economic Research and Statistics Division

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**Services Domestic Regulation –  
Locking in Good Regulatory Practices**

**ANALYZING THE PREVALENCE OF SERVICES DOMESTIC REGULATION DISCIPLINES  
AND THEIR POTENTIAL LINKAGES WITH ECONOMIC PERFORMANCE**

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*Manuscript date: 15 September 2021*

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**Disclaimer:** This is a working paper, and hence it represents research in progress. This paper represents the opinions of individual staff members or visiting scholars and is the product of professional research. It is not meant to represent the position or opinions of the WTO or its Members, nor the official position of any staff members. Any errors are the fault of the author.

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### ABSTRACT

Services is the fastest-growing sector of today's global economy and trade in services is the most dynamic segment of world trade. However, its potential remains constrained by a variety of barriers: trade costs are estimated to be almost double those in goods, and more than 40% of trade costs are accounted for by regulation-related factors. Regulatory measures related to the permission to supply a service, i.e. those related to licensing and qualifications requirements and procedures, and technical standards, can particularly affect service suppliers' ability to trade. With a view to mitigating the unintended trade-restrictive effects of such measures, since 2017, a group of Members has been negotiating a set of regulatory disciplines in the context of the Joint Initiative on Services Domestic Regulation.

Since the launch of negotiations in the Joint Initiative at the margins of the 11<sup>th</sup> WTO Ministerial Conference, a number of delegations have approached the WTO Secretariat for assistance on assessing to what extent their domestic regulatory regimes are consistent with the disciplines on services domestic regulation that the Joint Initiative has developed ("SDR disciplines"), as well as to understand what potential benefits the implementation of such disciplines might bring to their economies. This Paper expands on the individual assistance provided to WTO Members and has the following three objectives: (i) to examine the prevalence of the SDR disciplines in regional and bilateral trade agreements; (ii) to evaluate to what extent Members have already implemented SDR-related measures in their national regulatory frameworks; and (iii) to analyze the potential linkages between the application of the SDR disciplines and economic performance.

Firstly, based on a sample of 74 agreements concluded by 151 Members, we show that the adoption of domestic regulatory disciplines in trade agreements is a fairly established practice, particularly among "new generation" agreements concluded after 2005. Almost 40% of the Members in our sample, across all income levels and regions, being participants of the Joint Initiative or not, have committed on average to at least half of the SDR disciplines. Secondly, we analyze the level of implementation of the SDR disciplines in national regulatory frameworks using a sample of 86 Members. Not only have Members signed on to the SDR disciplines in their trade agreements, but they have also undertaken substantive regulatory reforms that implement these measures at the national level. We find that more than half of the economies in our sample have implemented in their regulatory regimes at least two thirds of the SDR disciplines under study. Lastly, while our research does not claim to establish causal relationships, we provide initial insights on the potential linkages between the application of the SDR disciplines and various indicators of economic performance, including services value-added, share of services trade, participation in global value chains, and level of entrepreneurship.

**JEL classification:** F13; F15; L8; K33.

**Keywords:** services domestic regulation, trade in services, trade agreements, economic performance

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## 1 INTRODUCTION

Services represent the fastest growing sector of the 21<sup>st</sup> century global economy, but its potential remains constrained by a variety of barriers, including limited transparency and predictability of regulations, and rather widespread procedural inefficiencies. Services currently account for more than 60% of world gross domestic product (GDP) and more than 50% of employment worldwide.<sup>1</sup> Services trade – through all four modes of supply – was estimated to be worth USD 13.3 trillion in 2017, accounting for some 43% of global trade (WTO, 2019a). However, services play a much more significant role: if one takes into account that services constitute more than 32% of value-added of manufacturing exports worldwide (WTO, 2019a), the contribution of services to international trade is larger than gross statistics suggest.

As the 2019 World Trade Report found, trade costs in the services sector are almost double those for trade in agriculture and manufacturing. International trade in services is about four times more costly than domestic trade. Regulatory differences, information and transaction costs, and governance aspects account for more than 40% of these costs (WTO, 2019a). As the scope of services trade encompasses not only cross border trade, but also other modes of supply<sup>2</sup>, and services are an important ingredient for trade and indeed economic performance overall, the negative impact of regulatory bottlenecks are likely to reverberate along value chains.

The ability of service suppliers to engage in trade is particularly affected by regulatory measures, including on matters related to licensing and qualification requirements and procedures, and technical standards. While services regulations differ widely across jurisdictions and sectors, they are, broadly speaking, motivated by a desire to reduce information asymmetries, address anti-competitive behavior, or negative externalities, and ensure equitable access to services. Transparent, predictable, and effective regulation is an important complement to services liberalization, with a view to producing the expected efficiency gains without compromising on services quality and other policy objectives.

The General Agreement on Trade in Services (GATS) distinguishes domestic regulation in services sectors from regulations that are explicitly defined as trade barriers. The latter are addressed through negotiations on Market Access (Article XVI) and National Treatment (Article XVII). Measures that constitute restrictions on market access are identified exhaustively in the GATS and consist of six types of mostly quantitative restrictions – imposing maximum quotas on the establishment and operations of service suppliers – as well as restrictions on legal form and foreign equity limitations. National treatment restrictions are defined as measures modifying the conditions of competition in favor of domestic services or services suppliers. The WTO Members are not allowed to maintain or adopt measures falling under GATS Articles XVI or XVII in sectors that are included in their services schedules of specific commitments, unless they have explicitly reserved therein the right to apply any of those otherwise inconsistent measures.

There are a priori no obligations to remove any other non-quantitative, non-discriminatory regulations in any services sectors. Apart from a limited number of good governance obligations, WTO Members are free to realize their regulatory objectives through any means consistent with GATS Articles XVI and XVII. However, already in the early 1990s, the drafters of the GATS recognized that regulatory measures that are not trade restrictions per se may have unnecessary trade-restrictive effects. For this reason, they established in Article VI:4 of the GATS a mandate to develop any necessary disciplines to ensure that key regulatory measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards, do not constitute unnecessary barriers to trade in services.

Inspired by the GATS Article VI:4 mandate and the large body of work undertaken in the Working Party on Domestic Regulation<sup>3</sup>, but recognizing that an outcome in that context was not viable, since

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<sup>1</sup> The figures are retrieved from the World Development Indicators (The World Bank, 2021).

<sup>2</sup> Article I of the GATS defines trade in services as the supply of a service through four modes: (i) cross-border supply, i.e. from the territory of one Member into the territory of any other Member (mode 1); (ii) consumption abroad, i.e. in the territory of one Member to the service consumer of any other Member (mode 2); (iii) commercial presence, i.e. by a service supplier of one Member through commercial presence in the territory of any other Member (mode 3); (iv) movement of natural persons, i.e. by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member (mode 4).

<sup>3</sup> For further information on the Working Party on Domestic Regulation, please refer to the WTO website at [https://www.wto.org/english/tratop\\_e/serv\\_e/dom\\_reg\\_negs\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/dom_reg_negs_e.htm) (last accessed 13 April 2021).

December 2017, a group of Members decided to advance efforts to develop a set of regulatory disciplines in the context of the Joint Initiative on Services Domestic Regulation (hereafter "Joint Initiative") – established at the margins of the 11<sup>th</sup> WTO Ministerial Conference. The Services Domestic Regulation disciplines (hereafter "SDR disciplines") build upon the GATS and provide additional obligations on regulatory matters, i.e. they are of a GATS-plus nature.

The SDR disciplines aim to mitigate the unintended trade-restrictive effects of regulatory measures.<sup>4</sup> At the time of writing, with the exception of one substantive element (concerning non-discrimination between men and women in the context of obtaining authorization to supply a service), WTO Members who are participating in the Joint Initiative are close to agreement on the substance of all the disciplines. Currently, the Joint Initiative encompasses 64 Members<sup>5</sup> – at different levels of development and with diverse regulatory systems and approaches – that account for more than 88% of global trade in services.<sup>6</sup> To accommodate this diversity, most of the disciplines provide for built-in flexibilities, with many obligations having to be fulfilled by participants "to the extent practicable", or "in a manner consistent with their legal system", or being phrased in soft-obligation language (e.g. "are encouraged to"; "shall endeavor to"). In addition, participating Members can delay the application of specific disciplines in sectors in which they face implementation difficulties. The use of transitional periods seeks to aid Members to make any necessary adjustments to their domestic regulatory frameworks.

It is worth noting that the SDR disciplines build on the work undertaken in the past 15 years in many international economic fora, including the OECD<sup>7</sup>, the World Bank<sup>8</sup>, and APEC<sup>9</sup>. Indeed, given the critical role that domestic regulations play in services sectors, certain organizations have progressively identified and promoted good regulatory practices. While the best practices developed by these institutions often have a broader good governance focus, i.e. they go far beyond services trade – as [Figure 1](#) below shows – most of the elements of the disciplines developed by the Joint Initiative appear prominently among these instruments.

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<sup>4</sup> For further information on the Joint Initiative on Services Domestic Regulation, its origin and purpose, please refer to the Factsheet available at [https://www.wto.org/english/news\\_e/news20\\_e/sdr\\_factsheet\\_nov20\\_e.pdf](https://www.wto.org/english/news_e/news20_e/sdr_factsheet_nov20_e.pdf) (dated 20 November 2020).

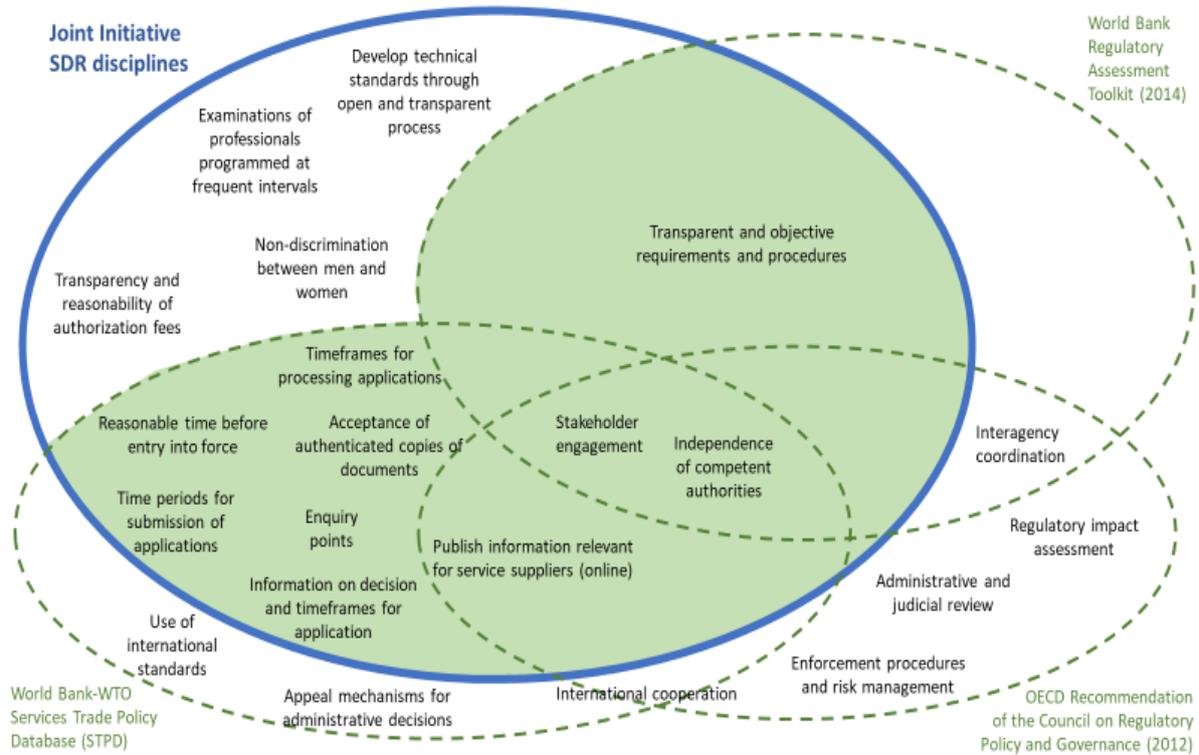
<sup>5</sup> At the time of writing, the following Members that are participating in the Joint Initiative on Services Domestic Regulation are committed to incorporating the outcome of the negotiations in their respective schedules of specific commitments: Albania; Argentina; Australia; Austria; Belgium; Brazil; Bulgaria; Canada; Chile; China; Colombia; Costa Rica; Croatia; Cyprus; Czech Republic; Denmark; El Salvador; Estonia; European Union; Finland; France; Germany; Greece; Hong Kong, China; Hungary; Iceland; Ireland; Israel; Italy; Japan; Kazakhstan; Korea, Republic of; Latvia; Liechtenstein; Lithuania; Luxembourg; Malta; Mauritius; Mexico; Moldova, Republic of; Montenegro; Netherlands; New Zealand; Nigeria; North Macedonia; Norway; Paraguay; Peru; Poland; Portugal; Romania; Russian Federation; Saudi Arabia, Kingdom of; Slovak Republic; Slovenia; Spain; Sweden; Switzerland; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Thailand; Turkey; Ukraine; United Kingdom; United States; Uruguay.

<sup>6</sup> Authors' calculations based on a new experimental dataset on Trade in Services by mode of supply (TISMOS) from the WTO (Wettstein, et al., 2019). Trade in services covers the four modes of supply, including mode 3 (i.e. commercial presence), which is the principal means of supplying services. Although the TISMOS dataset provides information broken down by mode of supply, for the purpose of this paper, an aggregate across the four modes of supply is used.

<sup>7</sup> See, for example, OECD Product Market Regulation Indicator (2018); OECD Recommendation of the Council on Regulatory Policy and Governance (2012), available at <http://www.oecd.org/gov/regulatory-policy/2012-recommendation.htm> (last accessed 15 April 2021).

<sup>8</sup> See, for example, World Bank Regulatory Assessment Toolkit (2014); World Bank Global Indicators of Regulatory Governance (2018); World Bank-WTO Services Trade Policy Database, available through the Integrated Trade Intelligence Portal (I-TIP Services) at <http://i-tip.wto.org/services/>.

**Figure 1: Overlap between Joint Initiative's disciplines on services domestic regulation and indicators of good regulatory practice**



It is important to note that such good regulatory practices have provided a baseline for many countries that have decided in recent years to undertake large regulatory reforms to improve their respective domestic business environment. For instance, with the objective of improving the opportunities for businesses, consumers, and other relevant groups to be involved in regulatory decisions that may affect their interests, several countries have designed public procedures for stakeholder engagement, providing for the possibility to obtain information on the objectives and rationales of proposed new measures and to submit comments to competent authorities for their consideration (as an example, see [Box 1](#), on the Unified Public Consultation Portal created by the government of Malaysia). Also, more and more countries have established online platforms to consolidate in one single place all the information that service suppliers may need to supply their services (as an example, see [Box 2](#), on the electronic assistance facility established by the United Kingdom).

### **BOX 1: CASE STUDY – MALAYSIA: UNIFIED PUBLIC CONSULTATION ONLINE PORTAL**

In October 2019, the government of Malaysia government launched the Unified Public Consultation (UPC) online portal, with a view to facilitating and streamlining the involvement of stakeholders in regulatory-making processes. The [UPC portal](#) provides for a single, centralized, online interface through which any regulatory authority can create a process of public consultation.

The standardized system of public consultation through the UPC platform is composed of three main stages. The first step ("Forum") provides an opportunity for regulatory authorities to put forward topics and receive initial feedback from stakeholders. The goal is to identify matters of public interest that may require regulators' attention. Based on the determination of areas for policy intervention, in the second step ("Preliminary Consultation"), the regulator prepares and makes available a draft paper for stakeholders' feedback. The draft paper aims to provide information on the issue at stake for intervention, the risks related to non-intervention, proposed solutions and preliminary analysis of possible impact. In the final step ("Final Consultation"), taking into account inputs and comments received at previous stages, the regulator publishes a draft final policy paper as well as a draft of the regulation it proposes to adopt.

The UPC portal has facilitated the flow of information and communication between regulators and stakeholders and has allowed the latter to engage effectively in matters of their interest. Within the first eight months of its launch, (as of May 2020), the UPC portal had hosted 68 completed public consultations, with another 52 ongoing.

**Source:** United States Agency for International Development (USAID) (2021), available [here](#).

### **BOX 2: CASE STUDY – UNITED KINGDOM: ELECTRONIC ASSISTANCE FACILITY**

The United Kingdom established an [electronic assistance facility](#) to support service providers in gathering information, as well as completing authorization procedures when seeking to provide services. The portal assists service providers to gain qualification recognition and establish their business in the UK.

The services user journey starts with accessing the "providing services and setting up a business" GOV.UK guidance page. By means of the "Licence Finder" tool, the user is assisted in identifying the required information and authorization procedures to be completed. At that point, depending on the area of interest, the user can either apply for authorization at GOV.UK "Licensify", or is redirected to the webpage of the relevant competent authority. In both cases, the user is allowed to complete the application online, including with the possibility of paying fees electronically. Once processed, the user receives confirmation of the decision on the application electronically and is assisted in any relevant next steps.

**Source:** [GOV.UK official website](#)

Good regulatory practices have also progressively entered and shaped negotiations of regional and bilateral trade agreements (hereafter in the abbreviated form "RTAs").<sup>10</sup> The fact that market access and national treatment commitments may not be sufficient to allow service suppliers to operate effectively in foreign services markets has been increasingly underlined in recent years. It has led negotiators to commence using trade agreements not only as a tool to remove quantitative restrictions and discriminatory measures relating to international services trade, but also to address regulatory obstacles and promote the good governance of services markets. As a result, significant

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<sup>10</sup> Agreements liberalizing trade in services are known as Economic Integration Agreements in the terminology used by the GATS Article V. However, this paper will refer to regional and bilateral trade agreements (RTAs), as this is the more generally used term. It will be understood as covering various forms of economic integration agreements, including bilateral agreements comprising trade in services.

developments on SDR-related matters can be found in the drafting of RTAs – and especially the "new generation" agreements that have been most recently adopted.<sup>11</sup>

The SDR disciplines – as designed by the Joint Initiative – focus on transparency and procedural aspects of obtaining authorization to supply a service, with a view to addressing the practical challenges that affect businesses' and suppliers' ability to operate. For explanatory purposes, in this Paper, the SDR disciplines will be classified into three – not mutually exclusive – categories:

#### **Disciplines on transparency**

Measures aimed at promoting prompt publication and availability of information relevant to service suppliers and their engagement in regulatory decision-making processes, including:

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

#### **Disciplines on legal certainty and predictability**

Measures aimed at ensuring regulatory and procedural guarantees to be followed by competent authorities when dealing with applications for authorization to supply services, including:

- Establishing indicative timeframes for processing applications;
- Processing applications in a timely manner;
- Providing information on the status of applications;
- Allowing applicants to correct minor deficiencies in incomplete applications and identifying additional information required;
- Informing applicants of reasons for rejection of applications and allowing resubmission;
- Allowing authorization, once granted, to enter into effect without undue delay;
- Allowing reasonable time between publication of laws and regulations and date of required compliance by service suppliers;
- Holding examinations for professional qualifications at reasonably frequent intervals.

#### **Disciplines on regulatory quality and facilitation**

Measures aimed at disseminating good regulatory practices to facilitate services suppliers' ability to trade, including:

- Requiring applicants to approach only one competent authority to obtain authorization;
- Permitting submission of applications at any time throughout the year, or at least, allowing reasonable periods of time for submission;
- Accepting electronic applications and authenticated copies of documents;
- Ensuring that authorization fees are reasonable, transparent, and do not in themselves restrict the supply of a service;
- Supporting professional bodies wishing to establish dialogues on issues relating to recognition of professional qualifications;

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<sup>11</sup> The term "new generation agreements" is frequently used for agreements that do not only cover trade in goods, but also services, investment, and potentially other aspects such as procurement and intellectual property rights. Such agreements often contain deeper provisions on regulatory issues.

- Ensuring that competent authorities reach and administer their decisions in a manner independent from services suppliers;
- Consolidating relevant information on a single online dedicated portal;
- Developing technical standards through open and transparent processes;
- Basing measures relating to authorization on objective and transparent criteria;
- Ensuring that procedures are impartial, adequate and do not unjustifiably prevent fulfilment of authorization requirements;
- Ensuring that authorization measures do not discriminate between men and women.

With the substance of the disciplines almost agreed among participants in the Joint Initiative, several other WTO Members are evaluating whether they should join the negotiations with a view to implementing the proposed disciplines in their national regulatory frameworks. In this light, a number of Members have approached the WTO Secretariat to assess to what extent their domestic regulatory regimes are compliant with the SDR disciplines, as well as what potential benefits the application of such disciplines might bring to their economies.

This Paper focuses on the issue of services domestic regulation as understood in the GATS and further developed by the Joint Initiative. This research represents, to our best knowledge, the first attempt in the field to look specifically at the SDR disciplines as designed by the Joint Initiative, with a view to providing an initial assessment of their potential economic impact. It therefore distinguishes itself from a broader analysis of regulatory quality indicators and the impact of services trade restrictions. The objective of this Paper is threefold:

- i. Review to what extent the SDR disciplines have found their way into trade agreements;
- ii. Assess the degree to which Members have already implemented the SDR disciplines in their national regulatory frameworks;
- iii. Analyze the potential linkages between the application of the SDR disciplines and economic performance.

This Paper finds that the trend towards the inclusion of SDR provisions in RTAs is broadly reflected across economies at all levels of development and regions, with only low-income economies participating to a limited extent. It appears that almost 40% of the Members in our sample have adopted on average at least half of the SDR disciplines. In addition, it shows that economies have already implemented SDR measures in their regulatory frameworks, with only low-income economies having done so to a lesser degree: averaged across all services sectors and modes of supply, more than half of the economies in our sample have implemented at least two thirds of the SDR measures. Further to extensive work on services domestic regulation at both the international and national level, this Paper also shows that the application of measures in line with the SDR disciplines designed by the Joint Initiative is associated with greater economic performance, including larger domestic services sectors, higher participation in global value chains, greater entrepreneurship, as well as more services trade.

Work on good regulatory practice is progressively expanding and has become even more important against the backdrop of the current COVID-19 pandemic. Although the scope of the RTAs and applied regime analysis in this Paper differ, the findings that emerge are complementary and mutually reinforcing. Our analysis suggests that services domestic regulation appears to be not only an issue of interest for developed economies. Rather, it also has particular relevance for middle- and lower-income economies, which, as part of their development strategies, are seeking to improve their domestic business environments. Besides introducing broad internal regulatory reforms, it appears that most economies are willing to signal their readiness to apply domestic regulation measures across services sectors in the agreements they conclude with their trading partners. An outcome on services domestic regulation under the WTO umbrella would establish a global benchmark for locking in good regulatory practices in services markets.

This Paper proceeds as follows: Section 2 describes the prevalence of SDR disciplines in a sample of 74 RTAs covering services, which includes some of the most recently adopted agreements and comprises 151 Members across all income levels and regions of the world. Section 3 demonstrates, based on a sample of 86 Members, that most of them have already implemented good regulatory practices in their domestic frameworks, which are aligned with the SDR disciplines developed by the Joint Initiative. Section 4 then shows, on the basis of the RTA sample introduced in Section 2, the potential linkages between the application of the SDR disciplines and selected indicators of economic performance. Finally, Section 5 concludes.

## 2 SERVICES DOMESTIC REGULATION AND REGIONAL TRADE AGREEMENTS

### *Key insights*

- Over time, RTAs have started addressing trade impediments resulting from a lack of transparency and procedural red tape. Several "new generation" agreements include a comprehensive set of disciplines largely equivalent to those developed by the Joint Initiative and, thereby, aim to spread good regulatory practices of services markets.
- The trend towards the inclusion of SDR disciplines in RTAs is reflected among economies at all levels of income and across all regions of the world, with only low-income economies to a limited extent.
- The adoption of SDR disciplines in RTAs is not limited to participants of the Joint Initiative: also WTO Members that are not participating in the Joint Initiative have included GATS-plus SDR obligations in their RTAs, with 32 out of 88 non-participants in our sample having signed on to at least five SDR disciplines, and eight committing to more than half of them.
- The use of soft obligations in the field of domestic regulation for services is a rather widespread practice among RTAs; nonetheless, in many RTAs, WTO Members have included mandatory obligations, particularly in the area of legal certainty and predictability of authorization measures and procedures.

### 2.1 Objective and methodology

The increased awareness of the importance of quality regulatory frameworks and sound business environments has progressively found its way into the negotiations of regional and bilateral trade agreements. Several "new generation" agreements that have been concluded after 2005 do not limit themselves to removing quantitative restrictions and discriminatory measures. They also increasingly aim to address regulatory obstacles, cutting procedural red tape and spread good regulatory practices.

The very same motivation has guided work on services domestic regulation in the context of the Joint Initiative, which, in the past few years, has gathered a significant number of WTO Members. As the negotiations have produced a stable set of disciplines, albeit still in draft form, interest has emerged in exploring the following questions:

- 1) How widespread has been the inclusion in RTAs of regulatory obligations in line with the SDR disciplines developed by the Joint Initiative?
- 2) Does the practice of including SDR obligations vary between economies at different levels of income and across regions?
- 3) Is such a practice linked to Members' participation in the Joint Initiative's negotiations?
- 4) How does the breadth and level of ambition of SDR obligations in RTAs compare with the disciplines developed by the Joint Initiative?

This Section addresses these questions by drawing on descriptive statistics and offering an overview of WTO Members' drafting practice in RTAs on SDR-related matters.<sup>12</sup>

The linkage between the RTA practice and the work of the Joint Initiative is particularly important: the adoption of regulatory disciplines in RTAs is a good indicator of an economy's capacity to give concrete effect to the SDR disciplines at the multilateral level. This is particularly so, since by their very nature, regulatory disciplines are typically applied on a non-preferential basis, i.e. beyond the

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<sup>12</sup> The analysis in this Section builds upon work on preferential trade agreements (PTAs) undertaken by Gabriel Gari (Gari, 2020) and the World Bank (Gootiiz, et al., 2020), the latter being available at <https://datatopics.worldbank.org/dta/table.html>.

signatories of the trade agreement. For example, if an RTA contains an obligation to publish any measure of general application before adoption, its parties will most likely fulfil the obligation by requiring the relevant domestic authorities to make the measures available through an official journal or a government website. The information would therefore be publicly accessible and of possible use to all interested persons, regardless of their origin. Similarly, if, for instance, the parties to an RTA commit to process applications for authorization to supply a service within a certain timeframe, evidence suggests that relevant authorities process all applications in the same manner, without differentiation on the applicants' origin. Therefore, the incidence of regulatory disciplines in RTAs suggests that parties can apply most, if not all, of such disciplines also multilaterally.

The analysis examines the prevalence of SDR disciplines in a representative sample of 74 RTAs covering services, including the most recently adopted agreements (even when not yet notified to the WTO).<sup>13</sup> The analysis encompasses the drafting practice of 151 WTO Members.<sup>14</sup>

The analysis focuses on chapters on trade in services and horizontal chapters on transparency and other regulatory matters. Conversely, it does not analyze SDR-related provisions included in stand-alone chapters on specific services sectors, such as financial or professional services, rules on e-commerce, or on the movement of natural persons. The objective is indeed to examine horizontal commitments that can apply across services sectors, as is the scope of the SDR disciplines designed by the Joint Initiative.

In terms of scope, this analysis covers all the substantive disciplines developed by the Joint Initiative, with the only exceptions of (i) the discipline on non-discrimination between men and women, for which a comparator could not be found in RTAs; as well as (ii) the discipline on developing domestic technical standards through open and transparent processes, as RTAs, instead, more commonly contain a provision on the use of international standards. Other RTA elements on good regulatory practices, including regulatory impact assessment, coordination among domestic agencies, international cooperation, and use of international standards, are not part of this analysis as they are outside the scope of the Joint Initiative's SDR disciplines.<sup>15</sup> It should also be noted that, for purposes of this analysis, the SDR measures on informing applicants on the status of their applications, informing applicants on decisions concerning the applications, and processing applications within a reasonable timeframe (under the category of legal certainty and predictability) are not considered of a GATS-plus nature. These obligations are already included in GATS Article VI:3 and, thereby, apply to all WTO Members for the sectors committed in their schedules of specific commitments, irrespective of whether they have been included in RTAs.<sup>16</sup>

In assessing the prevalence of SDR disciplines in RTAs, the analysis focuses on whether the substantive core of any given discipline is present in a specific agreement. In addition, to examine the incidence of the disciplines on the basis of their legal nature (Section 2.2.4), the SDR provisions are distinguished as either hard obligations (e.g. "shall", "will") or soft obligations (e.g. "should", "to the extent practicable", "shall endeavor").

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<sup>13</sup> Note that, at the time of writing, the Regional Comprehensive Economic Partnership (RCEP) (not in force); the new EU – MERCOSUR Agreement in principle announced in 2019; the new EU – Mexico Agreement in principle announced in 2018; the United States – Ecuador Protocol on Trade Rules and Transparency to Trade and Investment Council (TIC) Agreement (2020); the African Continental Free Trade Area (AfCFTA) (2019); the SADC Protocol on Trade in Services (2012); the COMESA Regulation on Trade in Services (2009) and the Economic Community of West African States (ECOWAS) (1995) had not yet been notified to the WTO under Article V of the GATS. For the full list of RTAs examined in this analysis, please refer to Table A.1 in the Annex.

<sup>14</sup> Following the classification of income groups by the World Bank, the sample used for this analysis comprises 55 high-income economies, 40 upper-middle-income economies, 36 lower-middle-income economies, and 20 low-income economies. Following the classification of regional groups by the World Bank, the sample used for this analysis is composed of 23 economies in East Asia & Pacific; 42 economies in Europe & Central Asia; 28 economies in Latin America & Caribbean; 12 economies in Middle East & North Africa; 2 economies in North America; 4 economies in South Asia; and 40 economies in Sub-Saharan Africa. For further information on the World Bank classification for income and regional groups, see <https://datatopics.worldbank.org/world-development-indicators/the-world-by-income-and-region.html>.

<sup>15</sup> For further details on the scope of this analysis, please refer to Table A.2 in the Annex.

<sup>16</sup> Note, however, that the SDR disciplines provided in GATS Article VI:3 may have broader, GATS-plus, applicability in an RTA context, namely in those agreements where they apply beyond the sectors committed in a WTO Member's GATS schedule of specific commitments, to specific additional sectors or horizontally across all services sectors.

On the basis of descriptive statistics, this analysis shows, first, the increasing prevalence of SDR obligations in RTAs over time. Secondly, it provides the percentage of Members that have adopted SDR provisions in RTAs by income level and regional group.<sup>17</sup> Thirdly, it compares the degree of inclusion of the disciplines by participants in the Joint Initiative and non-participants. Finally, it focuses on the legal nature of the SDR provisions in RTAs, and their convergence with the SDR disciplines.

The percentages of Members that have included obligations on SDR-related matters in their RTAs are calculated relative to (i) Members in the same income group and region; (ii) Members participating in the Joint Initiative, and those currently not participating, respectively; and (iii) lastly, all 151 Members with relevant agreements. Where a Member has included equivalent disciplines in more than one RTA, it is only counted once in the analysis. Hence, the descriptive statistics below show the most ambitious of each SDR discipline across all reviewed RTAs that a Member has concluded. In other words, the analysis reveals the percentages of Members that have included the respective SDR discipline at least once in their trade agreements.

Overall, the analysis suggests that, although variations exist among RTAs in their breadth and level of ambition, the SDR disciplines designed by the Joint Initiative reflect and consolidate a treaty-drafting practice that has been developed over the past 15 years. Hence, the establishment of a uniform set of obligations under the roof of the WTO would create a global benchmark for good regulatory practice of services markets. By achieving greater coherence, an outcome on services domestic regulation can provide a recognized baseline, with the potential for developing specific value added with regard to measures in different sectors or modes which are of particular importance to RTA partners.

## 2.2 Descriptive statistics

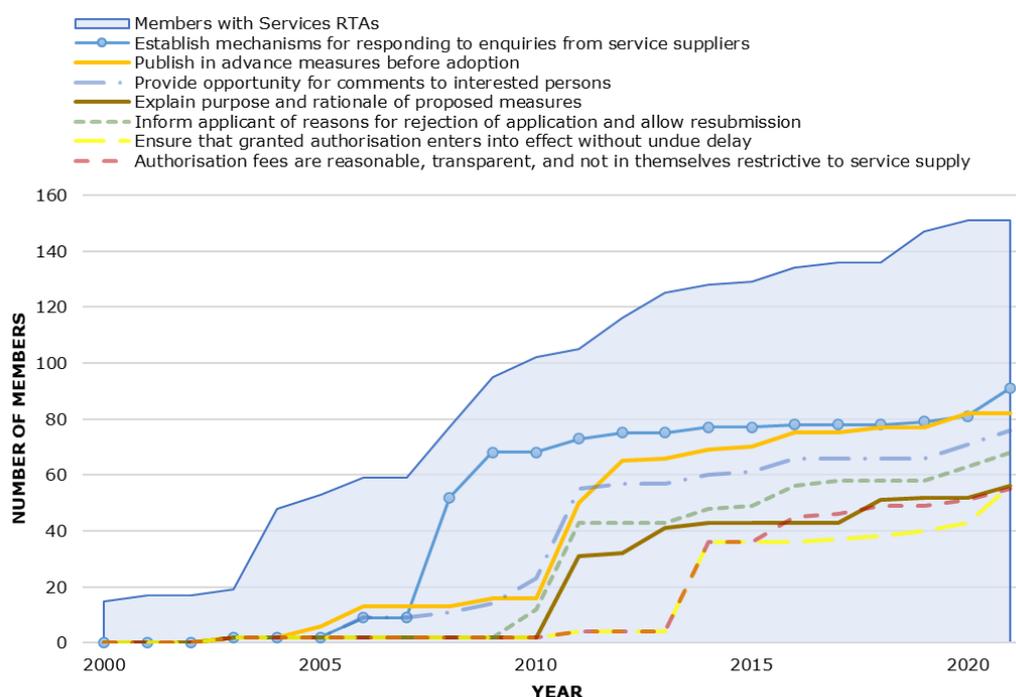
### 2.2.1 Prevalence of SDR disciplines in RTAs over time

**While earlier RTAs typically only cover a limited number of regulatory issues, several "new generation" agreements include a comprehensive set of regulatory obligations largely equivalent to the SDR disciplines developed by the Joint Initiative.**

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<sup>17</sup> See footnote 14.

**Figure 2: Number of Members with selected SDR disciplines in RTAs, from 2000 to 2021**



Building upon the work on good regulatory practices undertaken in several international economic fora, the scope of RTA negotiations on domestic regulation related matters has progressively expanded. Typically, earlier RTAs exclusively contained a reference to GATS Article VI and a commitment to review the results of WTO negotiations under GATS Article VI:4 with a view to bringing any agreed disciplines into effect between the RTA parties.<sup>18</sup> After 2005, an increasing number of WTO Members have agreed in their RTAs to the adoption of specific GATS-plus regulatory obligations applicable across all services sectors. As Figure 2 shows, for instance, by 2008, 52 WTO Members that signed an RTA covering services have included an obligation to establishing enquiry points to respond to questions from service suppliers; 13 Members have agreed to publishing in advance new laws and regulations before their adoption; and 11 of them have committed to providing an opportunity for comments to interested stakeholders.

Among the RTAs with deeper SDR provisions, the New Zealand-Hong Kong, China Closer Economic Partnership is one of the very first agreements that addresses the matter thoroughly.<sup>19</sup> The only SDR disciplines as designed by the Joint Initiative that appear *not* to be included in that agreement relate to consideration of comments received by interested persons on proposed measures, explanation of the purpose and rationale of laws and regulations, and establishment of a reasonable period of time between their publication and entry into force.

Since 2011, when the New Zealand-Hong Kong, China agreement entered into force, an increasing number of RTAs have followed this path. For instance, most of the agreements covering services that the European Union has concluded after 2011 with its trading partners, including with the Republic of Korea, Georgia, Canada, Japan, Armenia, Singapore, and Viet Nam cover almost comprehensively all the SDR disciplines as developed by the Joint Initiative.<sup>20</sup> Another example is the agreement signed in 2018 among the United States, Mexico, and Canada. It covers the entire

<sup>18</sup> See for example, Iceland – China (2014), Pakistan – Malaysia (2008).

<sup>19</sup> New Zealand-Hong Kong, China Closer Economic Partnership (2011), Chapter 13, Trade in Services, Article 9, Domestic Regulation; Annex III to Chapter 13, Disciplines on Domestic Regulation.

<sup>20</sup> EU – Republic of Korea Free Trade Agreement (2011); EU – Georgia Association Agreement (2014); EU – Canada Comprehensive Economic and Trade Agreement (2017); EU-Japan Economic Partnership Agreement (2019); EU – Armenia Free Trade Agreement (2019); EU – Singapore Free Trade Agreement (2019); EU – Viet Nam Free Trade Agreement (2020).

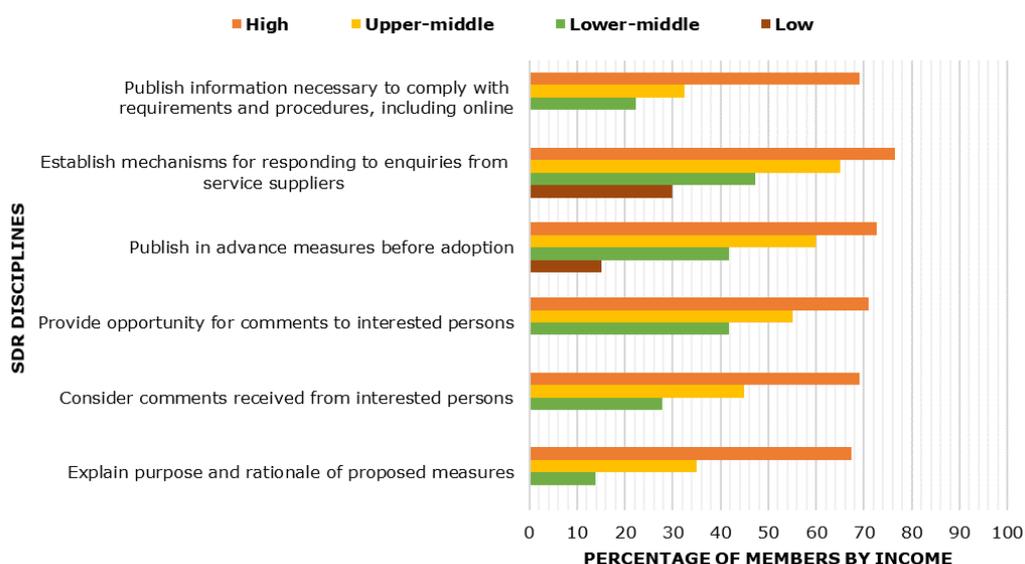
set of SDR disciplines as designed by the Initiative and goes even beyond: it includes a chapter dedicated to "good regulatory practices" built upon the recognition that "implementation of government-wide practices to promote regulatory quality through greater transparency, objective analysis, accountability, and predictability can facilitate international trade, investment, and economic growth, while contributing to each Party's ability to achieve its public policy objectives (including health, safety, and environmental goals) at the level of protection it considers appropriate."<sup>21</sup>

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 obligations has accelerated over time. While by 2005, only six WTO Members had concluded an RTA with GATS-plus regulatory obligations, this figure rose to 82 Members by 2010, 98 Members by 2015, and 112 Members by 2020. The most recent "new generation" agreements reflect economies' willingness to signal their commitment to good regulatory practices, as a tool to stimulate regulatory reforms at the national level, and, thereby, further support cross-border services trade. Equally, the conclusion of increasingly sophisticated RTAs can in itself serve as a drive to domestic regulatory reforms, to enhance the transparency and predictability of regulatory environments.

### 2.2.2 Analysis by income level and regional group

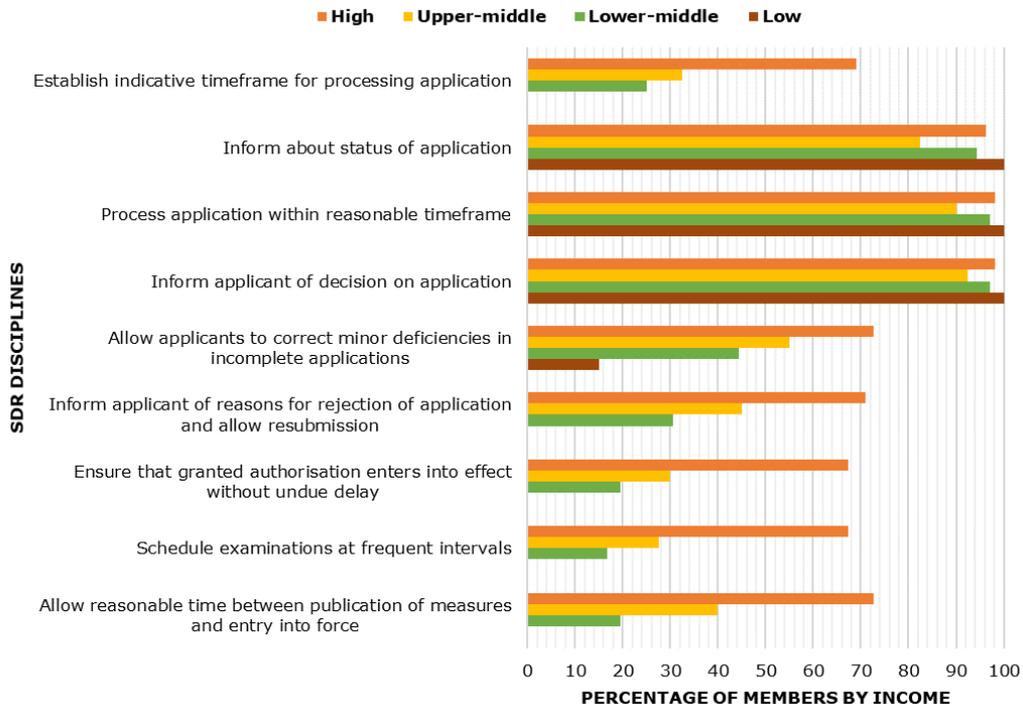
**Economies at all levels of income and across all regions of the world have included SDR obligations in their RTAs, and in particular in the "new generation" agreements most recently concluded.**

**Figure 3-A: SDR disciplines on transparency in RTAs  
Percentage of Members by level of income**

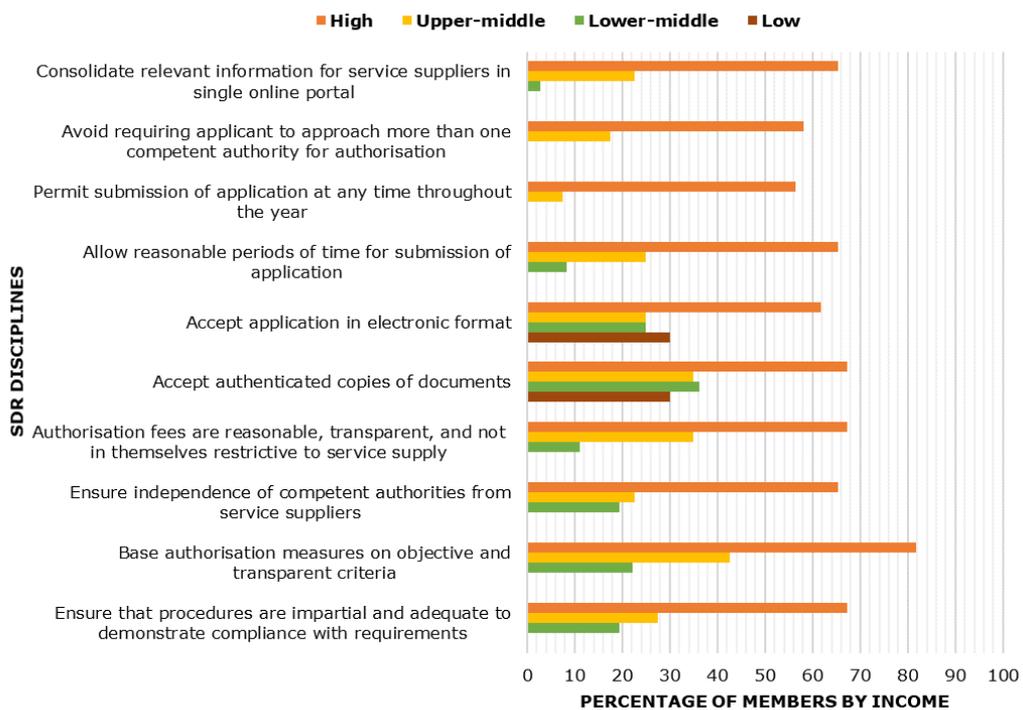


<sup>21</sup> United States-Mexico-Canada Agreement (USMCA/CUSMA/T-MEC) (2020), Chapter 28. "Good Regulatory Practices", Article 28.2.

**Figure 3-B: SDR disciplines on legal certainty and predictability**  
**Percentage of Members by level of income**



**Figure 3-C: SDR disciplines on regulatory quality and facilitation**  
**Percentage of Members by level of income**



As the trend towards the inclusion of SDR provisions in RTAs is progressively expanding, the analysis suggests that this practice does not only involve high-income economies, but also Members at lower-income levels – albeit with varying degrees in terms of coverage of the disciplines. [Figures 3-A to 3-C](#) show the percentages of Members that have included obligations on the respective SDR discipline in at least one of the RTAs they have signed, relative to Members in the same income group. With respect to measures on the transparency of regulatory frameworks ([Figure 3-A](#)) and the certainty and predictability of authorization procedures ([Figure 3-B](#)), although the percentage of high-income economies is higher (around 73%), also RTAs where one of the partners is an upper-middle and lower-middle-income economy provide for more than half of these types of obligations (around 50% for the upper-middle income group and around 36% for the lower-middle-income group). However, the coverage differs for low-income economies: the only GATS-plus SDR measures of these categories that have been found in agreements of low-income economies are (i) enquiry points; (ii) advance publication of measures; and (iii) information on incomplete applications.<sup>22</sup> In contrast, the degree of inclusion of regulatory quality and facilitation measures ([Figure 3-C](#)) varies greatly among income groups: while more than 64% of high-income economies have included more than half of these disciplines in their RTAs, only 25% of upper-middle and 8% lower-middle-income economies have done so. The analysis finds that only a limited number of low-income economies have committed to allowing authorization procedures to be completed by electronic means and to accept authenticated copies of documents.

The analysis shows that almost two-thirds of the RTAs in our sample (47 out of 74) in which at least one signatory is a middle- or lower-income economy, provide for GATS-plus SDR obligations applicable horizontally across services sectors.<sup>23</sup> A study by Araujo suggests that in RTAs between developed and developing economies, horizontal and sectoral domestic regulation obligations have been found to contribute to reconciling regulatory differences and, thereby, secure effective access to services markets (Araujo, 2014). In addition, such agreements can serve as a reference point for developing economies undertaking profound internal regulatory reforms with a view to locking in progress and signaling the existence of a stable regulatory environment to foreign service suppliers (Lejárraga & Shepherd, 2013). An illustrative example is PACER Plus, an agreement between Australia, New Zealand and nine Pacific islands (Cook Islands, Kiribati, Nauru, Niue, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu). It establishes obligations on the publication of measures relevant for service suppliers, procedural guarantees for the treatment of applications, and measures on consultation of interested stakeholders.<sup>24</sup>

In addition, it should be noted that SDR-related provisions are also included in some agreements that have been concluded exclusively among middle- and lower-income economies. For example, the COMESA Regulations on Trade in Services provide for an encouragement to accept authenticated copies of documents and to ensure that all procedures and formalities relating to the supply of services may be easily completed by electronic means.<sup>25</sup> In a similar vein, the SADC Trade in Services Protocol includes (i) a best-endeavor requirement to publish in advance any measures of general application before adoption; and (ii) an obligation to inform applicants of additional information required to complete applications.<sup>26</sup>

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<sup>22</sup> Note that, as explained in the objective and methodology of this analysis (Section 2.1), the SDR measures on informing applicants on the status of their applications, informing applicants on decisions concerning the applications, and processing applications within a reasonable timeframe ([Figure 2-B](#)), are not considered GATS-plus SDR disciplines – as they are contained in GATS Article VI:3 and, therefore, apply to all WTO Members for the sectors committed in their services schedules, irrespective of whether they have been included in RTAs.

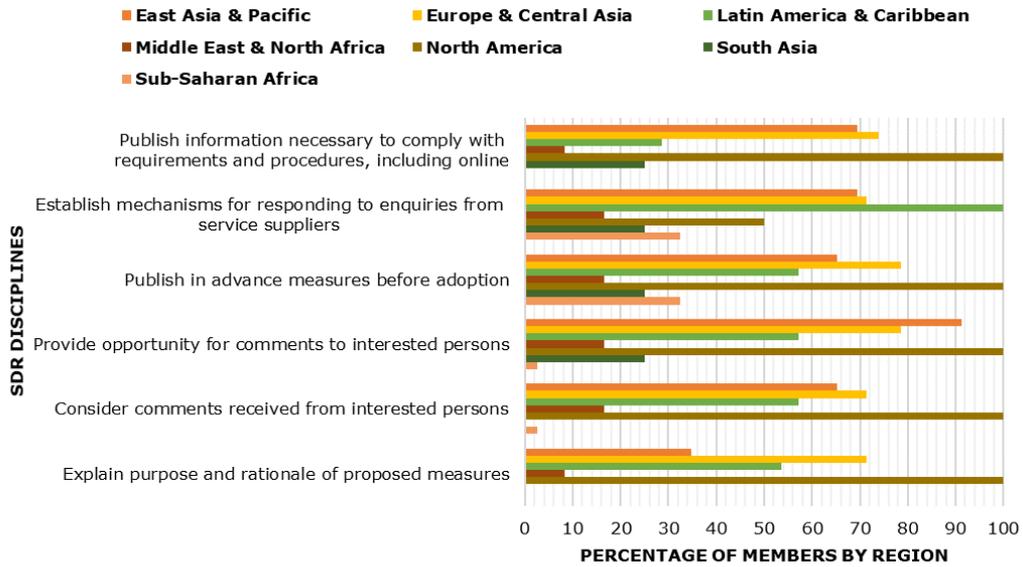
<sup>23</sup> See for example, Malaysia-Australia (2013); United States-Peru (2009); Dominican Republic - Central America - United States Free Trade Agreement (CAFTA-DR) (2006).

<sup>24</sup> Pacific Agreement on Closer Economic Relations (PACER) Plus (not yet in force), Chapter 7 on Trade in Services, Articles 10 and 17, and Chapter 13 on Transparency, Article 2.

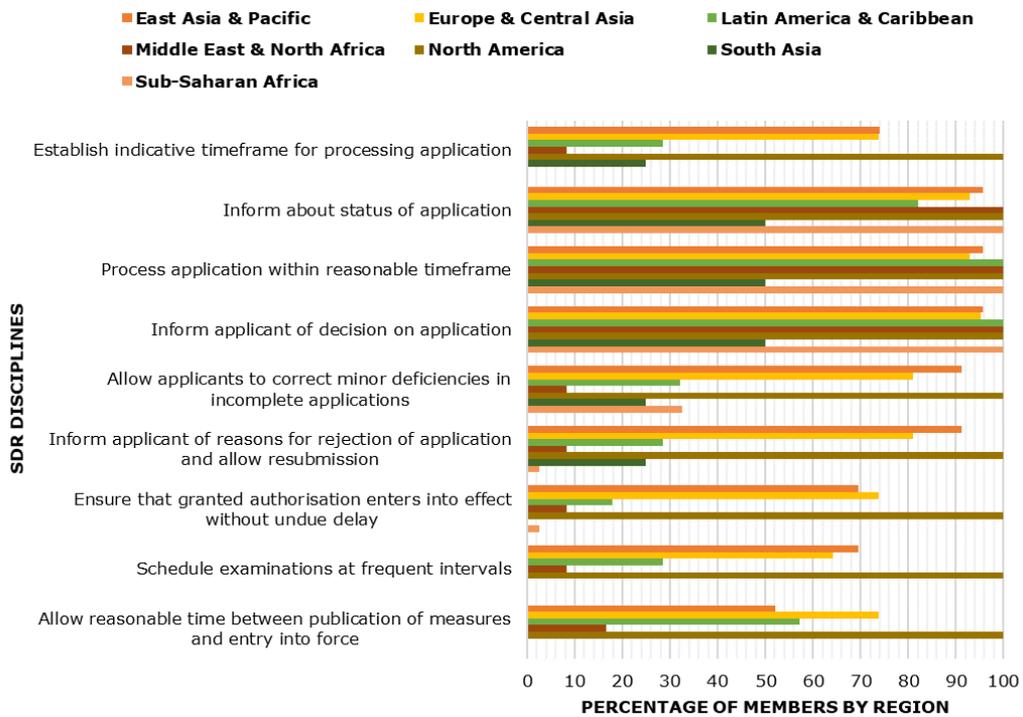
<sup>25</sup> Common Market for Eastern and Southern Africa (COMESA), Regulation on Trade in Services (2009), Articles 14, 31, and 33.

<sup>26</sup> Southern African Development Community (SADC), Protocol on Trade in Services (2012), Article 9.

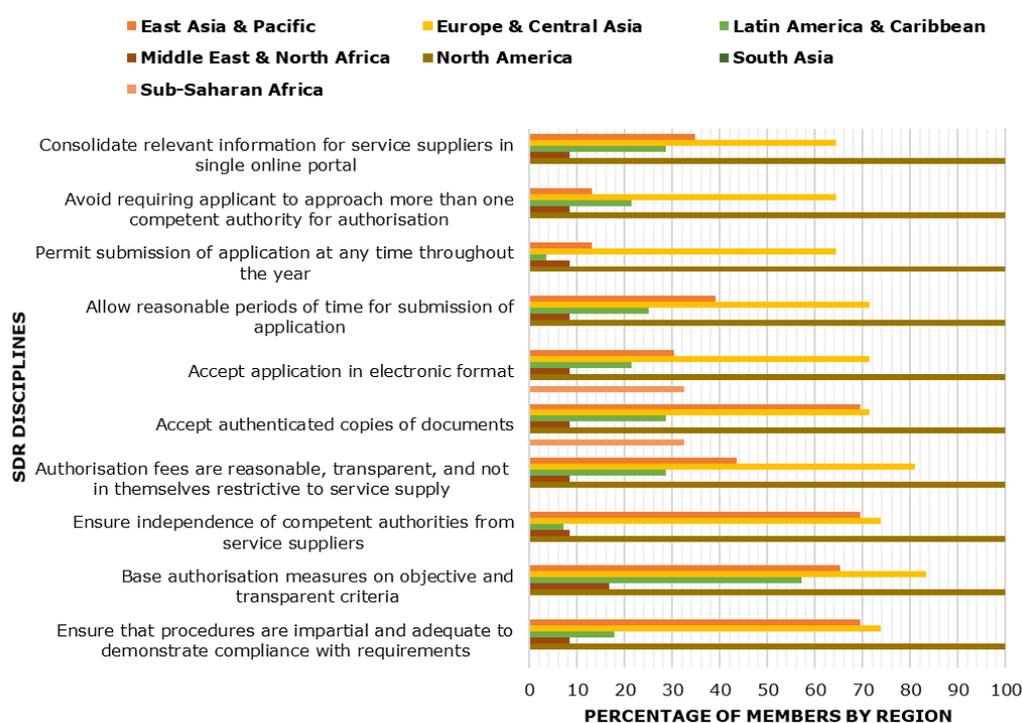
**Figure 4-A: SDR disciplines on transparency**  
**Percentage of Members by regional group**



**Figure 4-B: SDR disciplines on legal certainty and predictability**  
**Percentage of Members by regional group**



**Figure 4-C: SDR disciplines on regulatory quality and facilitation**  
**Percentage of Members by regional group**



The analysis also reveals that SDR obligations can be found in RTAs adopted across all regions of the world. Figures 4-A to 4-C show the percentages of Members that have included the respective SDR discipline in at least one of the RTAs they have signed, relative to Members in the same regional group. Most of the SDR disciplines on transparency and certainty and predictability of authorization procedures have been included in agreements negotiated by all WTO Members (Figures 4-A and 4-B), including from East Asia & the Pacific, and Latin America & the Caribbean. This holds true to a lesser degree for Members from South Asia, Middle East & North Africa, and Sub Saharan Africa: in some instances, Members from these regions have not included these disciplines in their RTAs – in particular with respect to measures on consideration of comments received by interested persons, explaining the purpose and rationale of proposed laws and regulations, ensuring that authorization enters into effect without undue delay, scheduling examinations at frequent intervals, and allowing a reasonable time between publication and entry into force. As Figure 4-C shows, measures on regulatory quality and facilitation are more prevalent in agreements whose signatory parties are from Europe & Central Asia, and North America. Instead, only small percentages of Members from East Asia & the Pacific, South Asia, Middle East & North Africa and Sub-Saharan Africa, have agreed to these types of commitments.

In this context, it is worth looking, as an example, at the framework agreement of the Pacific Alliance.<sup>27</sup> As for transparency measures, the agreement requires advance publication and prompt availability of laws and regulations, reasonable opportunities for interested persons to provide comments on proposed measures, and the establishment of appropriate mechanisms to respond to enquiries from service suppliers.<sup>28</sup> To enhance the clarity, predictability, and efficiency of authorization procedures, besides encouraging the establishment of indicative timeframes for processing of applications, the agreement mandates that applicants be informed on status and decision on its application, on the additional information required to complete it, and, in case of rejection, informed of the reasons thereof.<sup>29</sup> In addition, the agreement includes an obligation to ensure that examinations for authorization are scheduled at reasonably frequent intervals and that

<sup>27</sup> Acuerdo Marco de la Alianza del Pacífico, Protocolo Adicional al Acuerdo Marco de la Alianza del Pacífico (2018), comprised of Chile, Colombia, Mexico, and Peru.

<sup>28</sup> Ibid, Article 9.8(1) and (2); Article 9.9 (7); Article 15.3.

<sup>29</sup> Ibid, Article 9.9(2).

a reasonable time is provided to applicants for requesting to take examinations, as well as an encouragement to allow a reasonable time between publication and entry into force of regulations.<sup>30</sup> Whereas, concerning regulatory quality and facilitation measures, the Pacific Alliance framework agreement exclusively provides (i) an obligation to ensure that authorization fees are reasonable, transparent, and do not restrict in themselves the supply of the relevant service;<sup>31</sup> (ii) an obligation to ensure that measures are based on objective and transparent criteria;<sup>32</sup> (iii) an encouragement to accept authenticated copies.<sup>33</sup>

**BOX 3: CASE STUDY – REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP (RCEP)**

The RCEP negotiations were launched in November 2012 between the Association of Southeast Asian Nations (ASEAN) and its free trade agreement partners, namely Australia, China, India, Japan, New Zealand and the Republic of Korea. The agreement was signed in November 2020. The 15 signatories – comprising both participants and non-participants in the Joint Initiative – are now working towards domestic ratification of the agreement. RCEP currently represents the world's biggest free trade area by population and GDP (BBC News, 2020).

Among all the SDR disciplines designed by the Joint Initiative, RCEP contains an equivalent for almost all of them, except three: "Submission of Applications", "Application Timeframes", and "Independence". Moreover, in RCEP, the SDR-related provisions in the "Trade in Services" chapter are complemented by high-standard, horizontal, rules in other chapters, including in the chapter on "Small and Medium Enterprises", which provides for rules to encourage and facilitate the participation of small businesses, as well as the chapter on the "General Provisions and Exceptions", which establishes obligations on publication and administrative proceedings.

**Source:** [RCEP official website](#)

With respect to Asian economies, more ambitious SDR obligations can be found in more recent agreements. For instance, the 2009 ASEAN-Australia-New Zealand (AANZFTA) agreement is comparatively unambitious when it comes to regulatory obligations beyond the scope of GATS Article VI:3: it exclusively provides for an obligation to inform the applicant in the case of an incomplete or rejected application, as well as an encouragement to provide a reasonable opportunity for comments by interested persons on laws and regulations before their adoption.<sup>34</sup> In contrast, the 2020 Regional Comprehensive Economic Partnership (RCEP) – signed by all AANZFTA parties plus China, Japan, and the Republic of Korea – goes further than earlier agreements signed by countries across the Asian region. Among others, (i) it establishes that any authorization fees charged for the completion of application procedures are reasonable, transparent, and do not in themselves restrict the supply of a service; (ii) it also encourages parties to accept applications in electronic format and authenticated copies of documents; finally, (iii) it requires the parties to ensure, to the extent practicable, that examinations are scheduled at reasonable intervals and a reasonable period of time is provided to enable interested persons to submit an application (further information on RCEP can be found in [Box 3](#)). It is also worth noting

that while some of these appear in RCEP as hard obligations, they have been drafted by the Joint Initiative in more flexible language. Looking at this trend over time, one could argue, that, initially, divergences in the regulatory frameworks of Asian Members may have made it more challenging to negotiate and adopt extended SDR obligations. Over time and building on the increasing work on the transparency and predictability of regulatory frameworks undertaken in various international fora (such as APEC, the World Bank, OECD, etc.), Asian economies, as other regions of the world, have progressively aligned with the trend towards the inclusion of a more comprehensive set of provisions on SDR-related matters.

In brief, notwithstanding the various stages of economic development, regional differences, and variations of internal regulatory frameworks, the analysis shows that nearly 75% of Members have adopted at least one RTA with GATS-plus obligations on domestic regulation in the field of services. By now, 25% of Members have concluded at least one RTA that covers almost the full set of SDR disciplines comprehensively (i.e. at least 22 out of 25 disciplines).

<sup>30</sup> Ibid, Article 9.9(5) and Article 9.8(3).

<sup>31</sup> Ibid, Article 9.9(4).

<sup>32</sup> Ibid, Article 9.9(3).

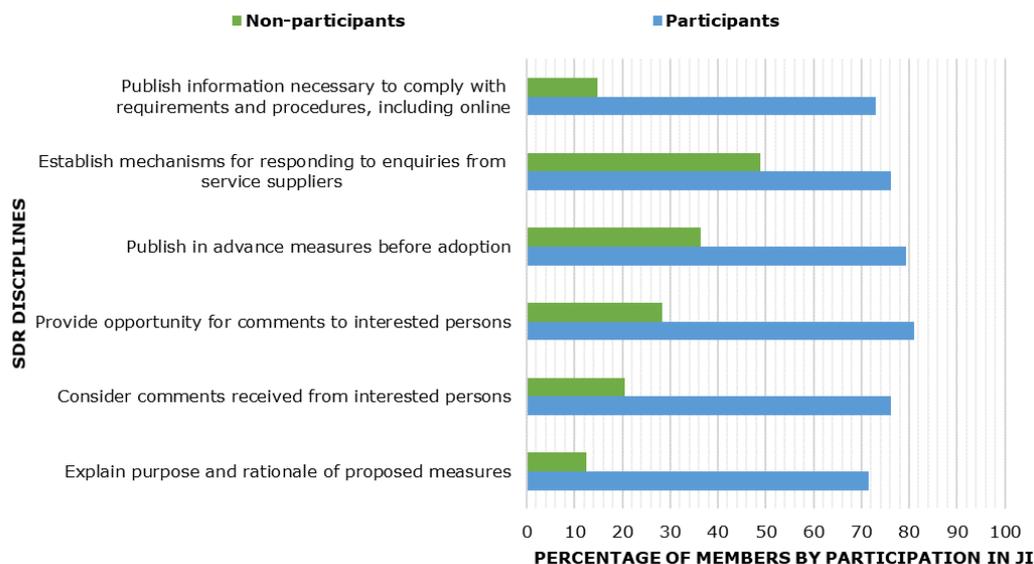
<sup>33</sup> Ibid, Article 9.9(2)(f).

<sup>34</sup> Agreement establishing the ASEAN-Australia-New Zealand Free Trade Area (2010), Article 10.5 and Article 11.2.

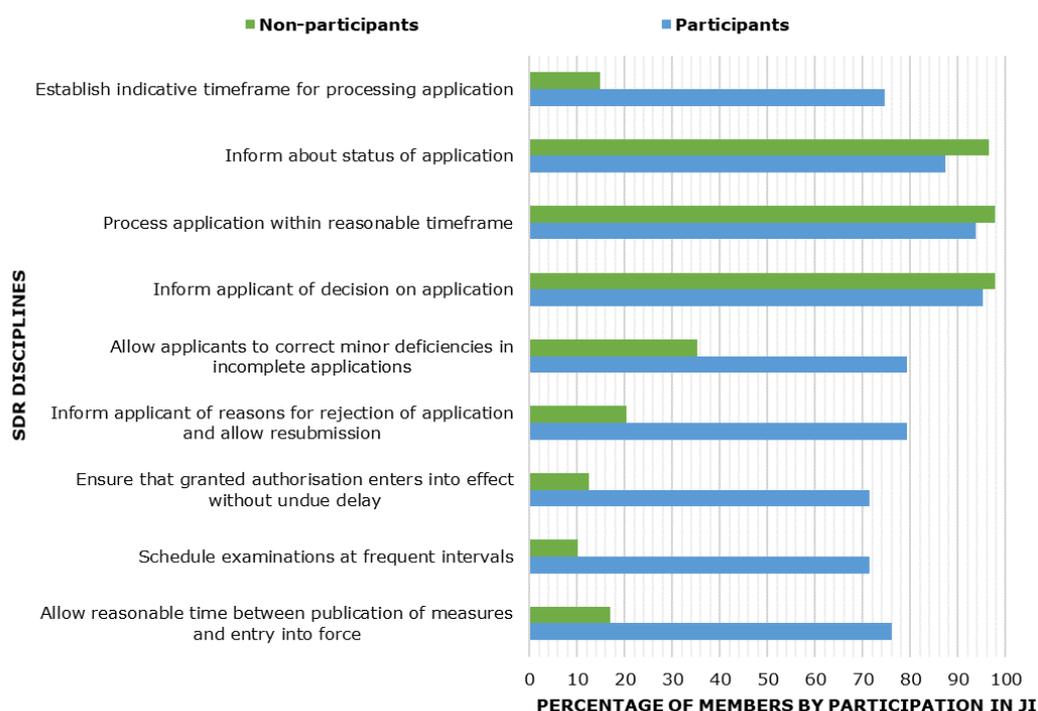
### 2.2.3 Analysis by participation in the Joint Initiative on Services Domestic Regulation

Recognizing the value and the potential economic gains that can derive from SDR commitments, also Members that are not participating in the Joint Initiative have included GATS-plus SDR obligations in their RTAs, with 32 non-participants having signed on to at least five disciplines as designed by the Joint Initiative, and eight committing to more than half of them.

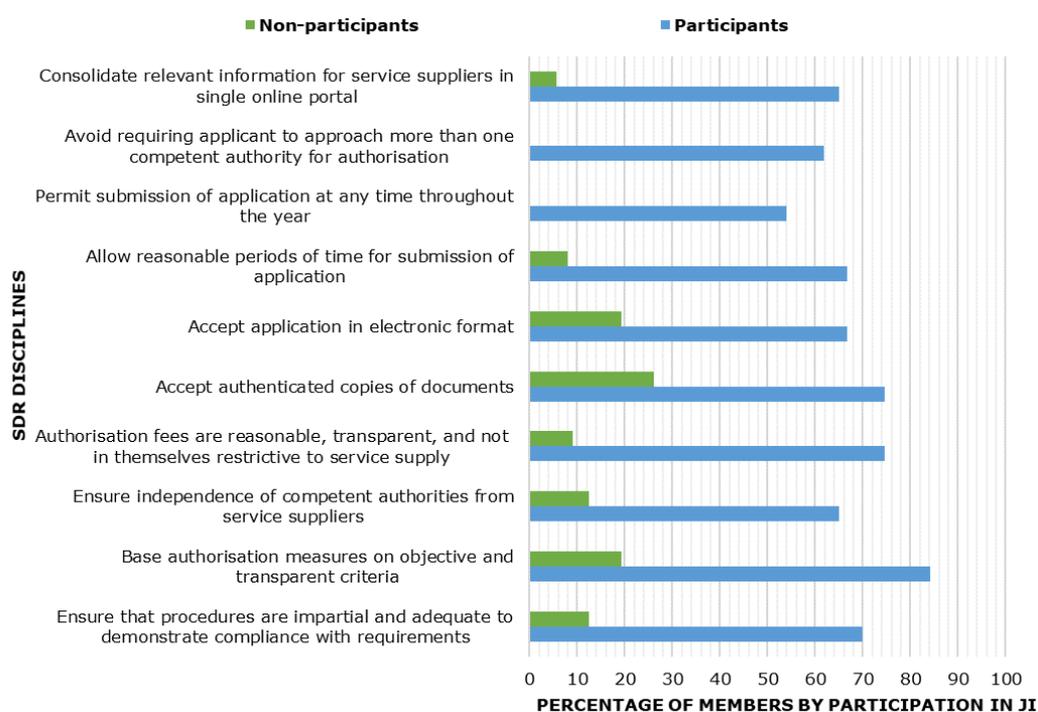
**Figure 5-A: SDR disciplines on transparency**  
Percentage of Members by participation in the Joint Initiative



**Figure 5-B: SDR disciplines on legal certainty and predictability**  
Percentage of Members by participation in the Joint Initiative



**Figure 5-C: SDR disciplines on regulatory quality and facilitation  
Percentage of Members by participation in the Joint Initiative**



As the Joint Initiative is a plurilateral process comprising, at the time of writing, 64 Members, the analysis aims to assess whether those who are not participating in these negotiations, have nonetheless adopted SDR-related provisions in their RTAs. Figures 5-A to 5-C show the percentages of Members that included SDR disciplines at least once in their trade agreements, respectively for Members participating in the Joint Initiative, and for those not participating. In principle, a large incidence of SDR disciplines in RTAs signed by non-participants would not be expected. Yet, our analysis finds that more than 60% of non-participating Members in our sample have included at least one GATS-plus regulatory obligation in the trade agreements they have adopted. Among them, 32 out of the 88 non-participants have signed on to at least five SDR disciplines as designed by the Joint Initiative, with eight committing to more than half of them.

The COMESA Regulations on Trade in Services<sup>35</sup> and the SADC Protocol on Trade in Services<sup>36</sup> are illustrative examples: while most of their signatories are currently not participating in the Joint Initiative, the agreements include certain SDR disciplines which go beyond the scope of the obligations in GATS Article VI:3. Similarly, the agreement between India and Malaysia (which at present are not participating in the Joint Initiative) provides for GATS-plus SDR obligations on (i) the treatment of incomplete and rejected applications; as well as (ii) advance publication of laws, regulations, procedures, and administrative rulings of general application before their adoption; and (iii) reasonable opportunity, where appropriate, to provide interested persons and the other signatory party to comment on such proposed measures.<sup>37</sup>

Interestingly, the US – Ecuador 2020 Protocol on Trade Rules and Transparency to the Trade and Investment Council (TIC) agreement includes an Annex devoted to good regulatory practices.<sup>38</sup> The Annex opens with the recognition that the "implementation of government-wide practices to promote regulatory quality through greater transparency, objective analysis, accountability, and predictability

<sup>35</sup> See footnote 25.

<sup>36</sup> See footnote 26.

<sup>37</sup> Malaysia-India Comprehensive Economic Cooperation Agreement (2011), Article 8.9 and Article 13.2.

<sup>38</sup> For more information, please refer to <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/december/united-states-and-ecuador-update-trade-and-investment-council-agreement-new-protocol-trade-rules-and>.

can facilitate international trade, investment, and economic growth while contributing to each Party's ability to achieve its public policy objectives (including health, safety, and environmental goals) at the level of protection it considers appropriate. The application of good regulatory practices can support the development of compatible regulatory approaches among the Parties, and reduce or eliminate unnecessarily burdensome, duplicative, or divergent regulatory requirements.<sup>39</sup> It is worth noting that the US – Ecuador 2020 Protocol pursues these objectives through a comprehensive set of provisions of which only some fall within the scope of the SDR disciplines. Specifically, these relate to the (i) online publication of draft regulations, including an explanation of their objective and rationale; (ii) opportunity to comments for interested stakeholders; and (iii) appropriate consideration of comments received on draft regulations by interested persons. In addition, going beyond the SDR disciplines as designed by the Joint Initiative, the Protocol also includes (iv) obligations on *ex-ante* and *ex-post* regulatory impact assessment; (v) an encouragement for regulatory authorities to use reliable high-quality information, and to be transparent about the source of information used; and (vi) a commitment on the use of plain language to ensure that regulations are clear, concise, and easy for the public to understand.

It should be highlighted that 77% of RTAs reviewed for this analysis, in which at least one party is currently participating in the Joint Initiative, provide for GATS-plus obligations on publication and availability of laws and regulations, measures on stakeholder engagement, and guarantees for the treatment of application to authorize the supply of services (Figures 5-A and 5-B). However, in line with the findings for income and regional groups, with respect to regulatory quality and facilitation measures (Figure 5-C), it emerges that the percentage of non-participating Members who adopted such obligations in RTAs is lower than that of Members who already expressed their commitment to an outcome in the Joint Initiative's negotiations. Amongst the RTAs signed between participants and non-participants, it appears that the agreements covering almost comprehensively the full set of SDR disciplines as developed by the Joint Initiative are those that have been most recently negotiated, including, for instance, RCEP, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

The significant incidence of SDR disciplines in RTAs suggests that there is broad recognition of the value of core principles on the transparency and predictability of regulatory environments. However, the practice towards inclusion in RTAs of SDR disciplines on regulatory quality and facilitation has only started in more recent years. Trade agreements can serve as a tool to further disseminate such good regulatory practices – including among those economies who are not participating in the Joint Initiative – with a view to strengthening their acceptance as benchmarks for the good governance of services markets.

In this light, the examples of MERCOSUR and the new "agreement in principle" between the EU and MERCOSUR are instructive. The MERCOSUR agreement was concluded in 2005, at a time when the practice of including GATS-plus regulatory obligations in RTAs was in its early stages. The agreement includes, further to GATS Article VI:3, an obligation to inform applicants of required additional information in case of incomplete application; and it requires regulatory measures to be based on objective and transparent criteria.<sup>40</sup> In addition, building upon GATS Article III:1<sup>41</sup>, the agreement requires the publication of all relevant measures of general application affecting trade in services before their date of entry into force.<sup>42</sup> The EU-MERCOSUR agreement has been announced in 2019 and it is not yet in force.<sup>43</sup> The new agreement reflects the fact that all its parties are also participating in the Joint Initiative's negotiations. It provides for a comprehensive set of SDR disciplines, including the more recently developed good regulatory practices on consolidating information relevant for service suppliers in a publicly accessible website<sup>44</sup>, avoiding requiring applicants to approach more than one competent authority for each application for authorization<sup>45</sup>,

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<sup>39</sup> Protocol to the Trade and Investment Council Agreement between the Government of the United States of America and the Government of the Republic of Ecuador relating to trade rules and transparency (2020), Annex II Good Regulatory Practices, Article 2.

<sup>40</sup> Protocolo de Montevideo sobre el Comercio de Servicios del Mercosur (2005), Article X.

<sup>41</sup> GATS Article III:1 reads " Each Member shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Member is a signatory shall also be published."

<sup>42</sup> Ibid, Article VIII.

<sup>43</sup> For further information on the status of the Agreement between the EU and MERCOSUR, please visit the official website of the European Commission at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=2048>.

<sup>44</sup> EU-MERCOSUR Association Agreement in Principle, Chapter on Small and Medium Enterprises, Article 2.

<sup>45</sup> Ibid, Chapter on Trade in Services and Establishment, Article 17.

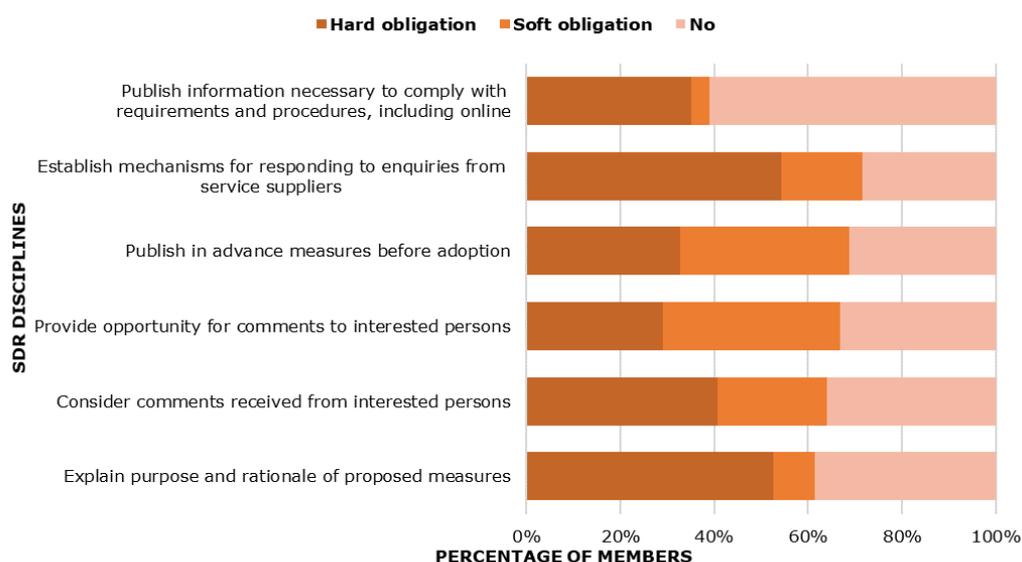
as well as requiring the impartiality of procedures<sup>46</sup> and encouraging the parties to accept applications in electronic format and authenticated copies of documents.<sup>47</sup>

In sum, the findings above suggest that also WTO Members that are not participating in the Joint Initiative recognize the value and the potential gains that may derive from the application of SDR disciplines. The analysis suggests that a large number of economies – at all levels of income and across all regions of the world – regardless of their current participation in the Joint Initiative, appear to have the technical capacity and resources to agree to SDR obligations in their RTAs, and thereby, implement them domestically.

#### 2.2.4 Analysis by legal nature of SDR measures

**The use of soft language in the field of domestic regulation is a fairly widespread practice among RTAs, with on average 40% of SDR obligations expressed in soft language; nonetheless, in many RTAs, WTO Members have included mandatory obligations, particularly in the area of legal certainty and predictability of authorization measures and procedures – whereas the corresponding SDR disciplines developed by the Joint Initiative are drafted in soft language.**

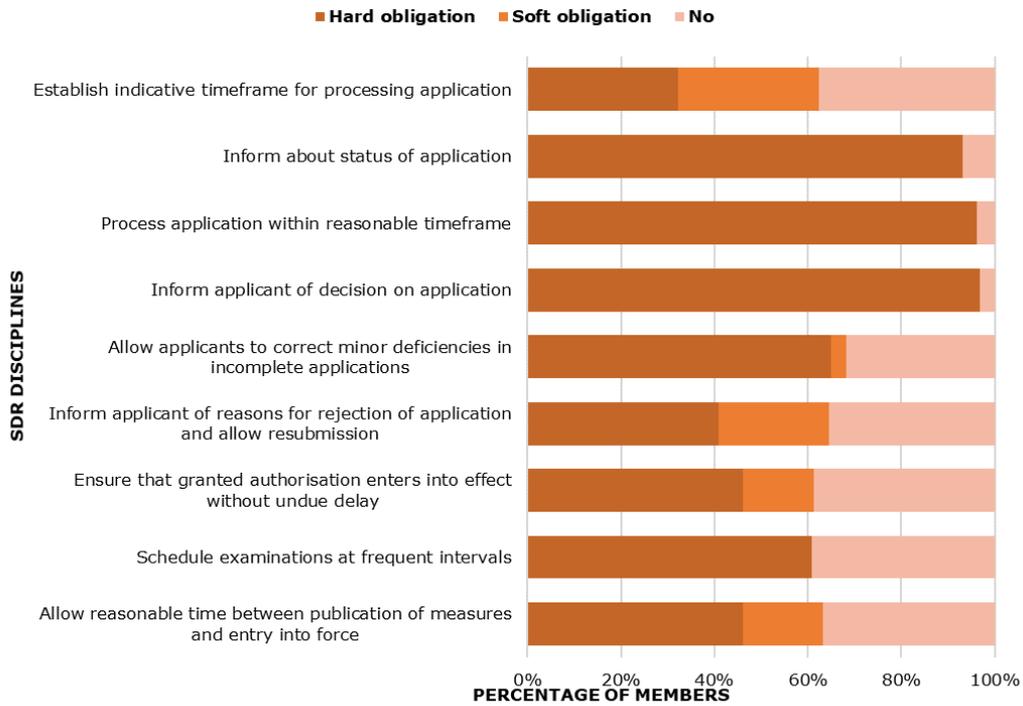
**Figure 6-A: SDR disciplines on transparency  
Percentage of Members by legal nature of the obligation**



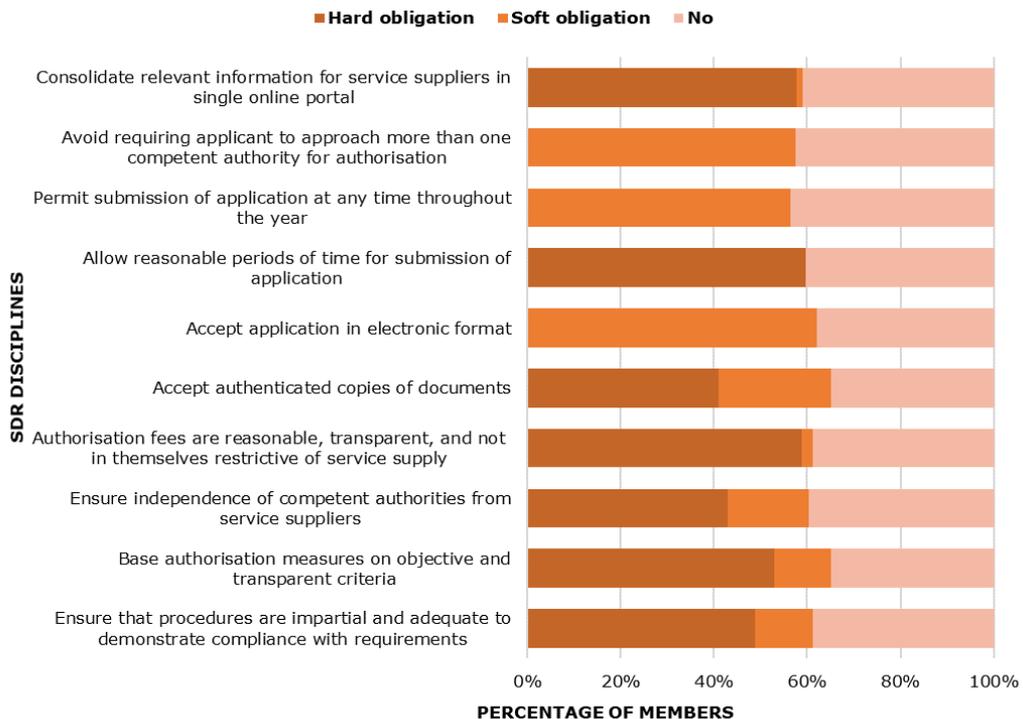
<sup>46</sup> Ibid, Chapter on Trade in Services and Establishment, Articles 15 and 17.

<sup>47</sup> Ibid, Chapter on Trade in Services and Establishment, Article 17.

**Figure 6-B: SDR disciplines on legal certainty and predictability  
Percentage of Members by legal nature of the obligation**



**Figure 6-C: SDR disciplines on regulatory quality and facilitation  
Percentage of Members by legal nature of the obligation**



Figures 6-A to 6-C show separate percentages for Members that have included a soft or hard obligation, or no obligation with respect to each specific discipline, relative to all 151 Members in our sample. Since we only consider the most ambitious obligation for the construction of the percentages, a Member having both soft and hard obligations on the same type of discipline in several RTAs is considered committed to a hard obligation. With respect to the legal nature of SDR provisions in RTAs, this analysis shows that the inclusion of soft obligations is a fairly widespread practice, with on average 40% of SDR obligations expressed in soft language. The soft nature of SDR obligations in RTAs may be explained by several factors: firstly, it may be linked to the breadth of the measure (i.e. whether it applies to only some sectors or horizontally) (WTO, 2019a); secondly, it may relate to the development stage of the economies undertaking the commitment, as well as the technical capacity and resources required to implement such an obligation domestically; finally, it may correspond to a first step in treaty-drafting practice aiming to further disseminate and build acceptance around certain good regulatory practices – before introducing them as mandatory undertakings (WTO, 2019a).

However, it is worth highlighting that many RTAs have moved beyond the adoption of soft obligations – which are, instead, most prevalent in the SDR disciplines developed by the Joint Initiative – as a minimum common denominator to obtain agreement among all the participating Members. In many RTAs, instead, restricted groups of economies with ambitious trade goals have been able to design mandatory obligations, particularly, as it appears from Figure 6-B, in the area of certainty and predictability of authorization procedures.<sup>48</sup> As Figure 6-A shows, also transparency provisions related to the publication of measures relevant for services suppliers and the establishment of enquiry points have mainly been adopted by the majority of WTO Members in their RTAs as mandatory obligations. Similarly, where more recently concluded RTAs provide for regulatory quality and facilitation provisions, including on transparency and reasonableness of procedural fees and the establishment of a single dedicated website containing relevant information for services suppliers and, especially, small and medium-sized enterprises (SMEs), these are mainly drafted with mandatory language (Figure 6-C).<sup>49</sup>

To conclude, drafting variations exist among RTAs regarding their scope and level of ambition. Nevertheless, RTAs are converging towards a set of good regulatory practices that can serve as a tool to further improve the transparency and predictability of regulatory environments. The analysis finds that the SDR disciplines developed by the Joint Initiative reflect closely the regulatory obligations contained in trade agreements. Therefore, it appears that the Members participating in the Joint Initiative are seeking to consolidate such a drafting practice that has developed among RTAs over the past 15 years. By locking in a uniform set of obligations under the roof of the WTO, the drafting differences among RTAs will be streamlined at the multilateral level – with the potential of enhancing the quality and effectiveness of domestic regulatory frameworks, and thereby, further boosting international services trade.

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<sup>48</sup> See for example, new EU – MERCOSUR Agreement in principle announced in 2019 (not yet into force), Chapter on Trade in Services and Establishment, Article 15; Eurasian Economic Union (EAEU) – Viet Nam (2016), Article 8.5; Switzerland – China (2014), Annex VI, Article 2.

<sup>49</sup> See for example, USMCA, Article 28.7; Peru – Australia, Article 25.2.

### 3 SERVICES DOMESTIC REGULATION AND NATIONAL REGULATORY FRAMEWORKS

#### *Key insights*

- While most economies have already introduced certain regulatory measures in their respective regulatory frameworks, the degree of implementation of SDR disciplines at the domestic level tends to increase with higher levels of income.
- Although significant variation between regions exists, many economies across the globe have already implemented good regulatory practices at the domestic level.
- Among all economies under study, more than half have implemented in their regulatory regimes at least two-thirds of the SDR measures reviewed.
- The level of implementation of SDR disciplines is greater among WTO Members participating in the Joint Initiative. Nevertheless, also 35% of the economies studied that are currently not participating in these negotiations have introduced on average at least five of the SDR disciplines in their national regulatory frameworks.

#### 3.1 Objective and methodology

As the previous Section has shown that RTAs – especially those "new generation" agreements adopted most recently – provide for regulatory obligations in line with the Joint Initiative's disciplines, the question arises as to what extent economies have already implemented those SDR-related measures in their national regulatory frameworks. Thus, the analysis in this Section aims to address the following questions:

- 1) Have Members already implemented laws and regulations in line with good regulatory practices in their national regulatory frameworks?;
- 2) Does the degree of implementation of SDR-related measures depend on Members' level of income or vary across regions?;
- 3) Are WTO Members currently participating in the Joint Initiative more likely to take on regulatory reforms implementing the SDR disciplines than those not engaged in the negotiations at present?

With the help of descriptive statistics, this Section provides initial insights on these questions. Assessing whether obligations on SDR-related measures have been implemented in national regulatory frameworks is particularly important: regulatory environments are a key determinant of the performance of the service sector and the economy as a whole. Non-transparent and overly burdensome laws and regulations at the national level may negatively affect the concrete value of market access commitments undertaken by WTO Members in their services schedules (Mattoo & Sauv , 2003). Conversely, where domestic regulatory measures are clear, transparent, and predictable, they are likely to boost the efficiency and competitiveness of services and services suppliers, and, thereby, accelerate economies' productivity and income growth (Parker & Kirkpatrick, 2012).

In this analysis, a number of different data sources are used to map the SDR disciplines to publicly available information on regulatory frameworks. As primary sources, the World Bank-WTO Services Trade Policy Database (STPD) (Borchert, et al., 2019)<sup>50</sup> and the OECD Services Trade Restrictiveness Index (STRI) Regulatory Database (2016 version; OECD, 2016) are used. To map further SDR disciplines and extend the sample size of the economies studied, the following complementary data sources are used:

- World Bank-WTO Licensing Survey (2015) (not publicly available);

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<sup>50</sup> The paper can be found at [https://www.wto.org/english/res\\_e/reser\\_e/ersd201914\\_e.htm](https://www.wto.org/english/res_e/reser_e/ersd201914_e.htm).

- OECD Product Market Regulation (PMR) Indicator (2018);
- The World Bank Global Indicators of Regulatory Governance (2018);
- Official government/ministry websites, domestic laws and regulations (manual data collection);
- Obligations contained in Members' RTAs;
- Obligations provided in GATS Article VI:3.

Through our research, even if not complete, we have been able to create an extensive and reliable database on applied SDR-related measures. Where data was missing for specific SDR disciplines from the above-mentioned databases, information was collected *ad hoc* for individual economies, either through manual research in official government/ministry websites or based on RTA obligations. In addition, implementation by all Members is assumed with respect to two of the obligations contained in GATS Article VI:3, i.e. (i) informing applicants of the decision concerning the application; (ii) informing applicants on status of their application. For any further details on the sources used for this analysis, please refer to Table A.3 in the Annex.

Given the lack of available data, the analysis is not able to capture all the SDR disciplines as developed by the Joint Initiative. Consequently, the results are only able to draw a partial picture. Nevertheless, thanks to extensive data collection efforts the analysis is able to cover 14 SDR disciplines.

The sample used for this analysis comprises 86 WTO Members, for which information on the SDR disciplines as implemented in national regulatory frameworks is publicly available.<sup>51</sup> The sample includes data on 23 services subsectors and three modes of supply (i.e. cross-border supply, commercial presence, and presence of natural persons).<sup>52</sup>

In addition, with respect to the level of detail of the data collected, it is important to note that, while the information compiled from the World Bank-WTO STPD and the OECD STRI Regulatory Database is available for a wide number of different services sectors, other sources only provide data for the economy horizontally. To ensure consistent results in this analysis, the economy-wide data is assumed to apply to each of the 23 services subsectors. Moreover, as the sources used were updated at different points in time between 2015 and 2020, we assume that no major changes have taken place to the regulatory frameworks since the most recent information was collected. The assumption appears reasonable to the extent that economies that are in the process of undertaking domestic reforms to adopt good regulatory practice are unlikely to reverse these reforms.

For purposes of this analysis, *implementation* means that the SDR discipline at issue has been introduced in a given national regulatory framework. However, the analysis does not take into account the various flexibilities developed by the Joint Initiative for implementing the SDR disciplines domestically. Thus, we assume implementation only if the substantive SDR discipline is in place without recourse to flexibility. In other words, when the analysis shows that individual Members have not implemented the substance of certain disciplines, this does not mean that their applied regime is necessarily inconsistent with the Joint Initiative's disciplines.

To measure the actual level of implementation and observe general trends among Members, we calculate a score across the disciplines. For each of the 14 SDR disciplines, we award a score of 1 when the SDR discipline is implemented and 0 when it is not implemented.<sup>53</sup> In a first step, we

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<sup>51</sup> For more details on the economies covered in the analysis, please refer to the list provided in Table A.4 in the Annex. Following the classification of income groups by the World Bank, the sample used for this analysis comprises 40 high-income economies, 22 upper-middle-income economies, 17 lower-middle-income economies, and 7 low-income economies. Following the classification of regional groups by the World Bank, the sample used for this analysis is composed of 14 economies in East Asia & Pacific; 34 economies in Europe & Central Asia; 11 economies in Latin America & Caribbean; 5 economies in Middle East & North Africa; 2 economies in North America; 4 economies in South Asia; and 16 economies in Sub-Saharan Africa. For further information on the World Bank classification for income and regional groups, see <https://datatopics.worldbank.org/world-development-indicators/the-world-by-income-and-region.html>.

<sup>52</sup> Consumption abroad (mode 2) is not included in this analysis as it is mainly relevant in health, education, and tourism services, all of which are not covered in this analysis.

<sup>53</sup> Note that when a subsector is closed to foreign service suppliers or a license is not required, we lack information on the actual system of processing applications for authorizations and licensing. In such cases, disciplines relating to licensing and authorization are awarded a score of 1. The underlying reasoning is that the aim of this analysis is not to investigate an economy's restrictiveness in services trade, but rather the actual level of implementation of the SDR disciplines. We are confident that the overall results are not distorted by this

compute an overall score at the subsector-mode level, which is obtained by calculating a simple average across the 14 disciplines. No priority, different weights, or hierarchical order is given to these SDR disciplines. In a second step, we compute a score at the subsector level across all modes of supply. Hereby, the disciplines by different modes of supply are weighted according to their importance for the supply of the respective service in each subsector and then aggregated. Lastly, an overall economy-wide score is obtained by aggregating the indices by different subsectors according to the average value-added weights for each subsector. The aggregation of modes of supply and sectors to obtain an economy-wide score follows the methodology used for the construction of the World Bank-WTO Services Trade Restrictions Index (STRI) (Borchert, et al., 2019).

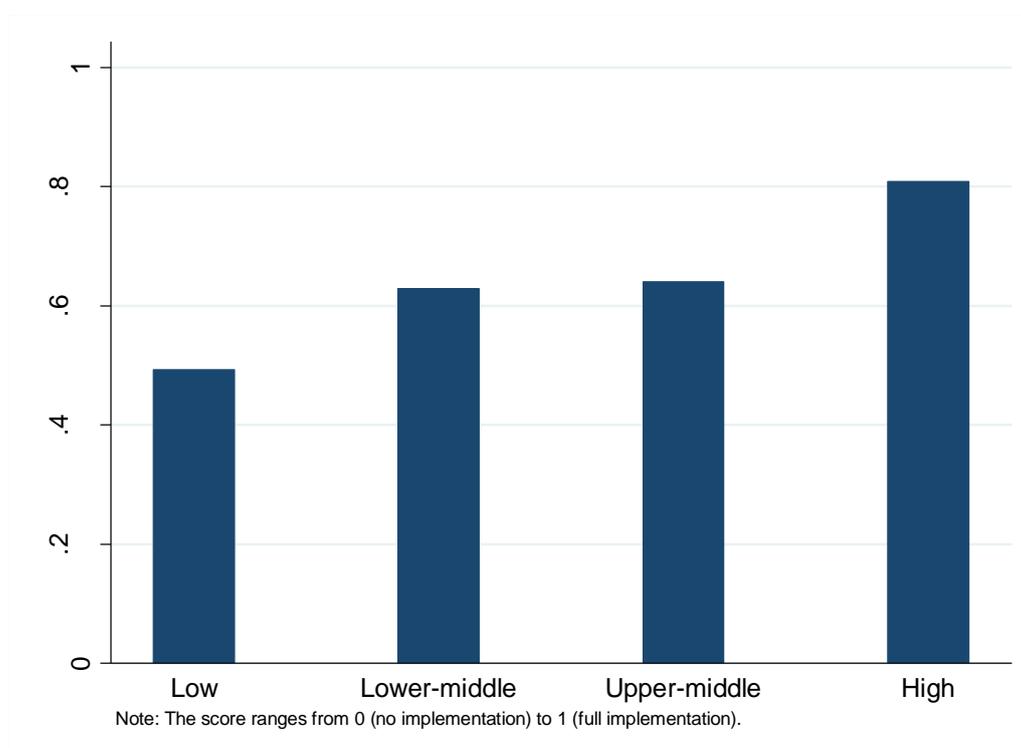
Overall, on the basis of descriptive statistics, the analysis shows that an increasing number of WTO Members have conducted large domestic regulatory reforms to implement measures in line with the objectives of the SDR disciplines developed by the Joint Initiative. Such a trend includes economies at lower levels of income and across all regions of the globe, for which the SDR disciplines likely constitute a reference point for the elaboration of their domestic development strategies. The analysis also finds that, while the degree of implementation of SDR disciplines is lower than that among Members who are participating in the Joint Initiative, 35% of the economies studied who are currently not part of the negotiations have introduced on average at least five of them in their respective regulatory frameworks.

### 3.2 Descriptive statistics

#### 3.2.1 Analysis by income level and regional group

**While all economies studied have introduced a substantive number of SDR-related measures in their domestic regulatory frameworks, the level of implementation tends to increase with income levels and variations exist across regions of the world.**

**Figure 7: SDR scores by income level**



assumption since less than 3% of the observations at the subsector-mode-discipline level are concerned. Any risk of distortion further reduces with higher levels of aggregation.

**Figure 8: SDR scores by regional group**

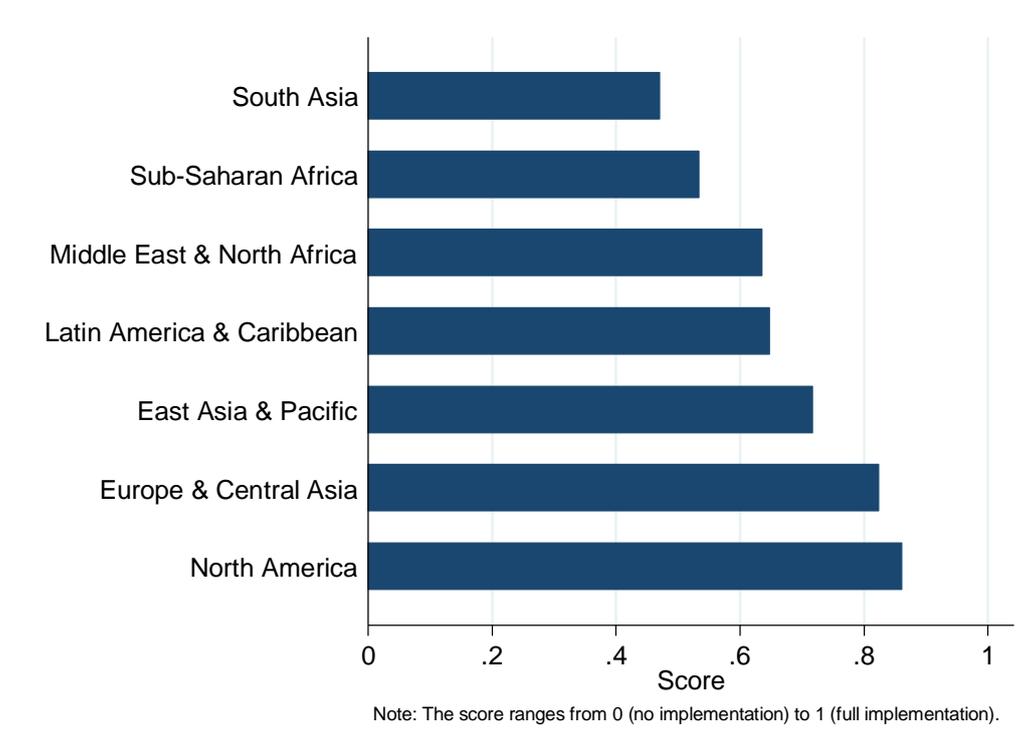


Figure 7 depicts the SDR score across the 14 disciplines studied, by income groups. Looking at the overall score for the four income groups, it is evident that most of the economies in our sample have implemented the SDR disciplines at least partially. Indeed, none of the income groups has an average overall score below 0.49.

In addition, the analysis reveals that the degree of implementation of SDR disciplines tends to increase with higher levels of income. Indeed, the average score of the high-income group (0.81), means that more SDR disciplines are in place at the domestic level. Middle-income economies also implement a high portion of the SDR disciplines, with an average overall score of 0.64 for the upper-middle and 0.63 for the lower-middle-income group. The lowest level of implementation is observed among the low-income group, whose overall score is 0.49 on average.

Figure 8 reveals that the regions with the greatest level of implementation of the disciplines are North America and Europe & Central Asia, with relatively high scores above 0.8. Interestingly, WTO Members from East Asia & the Pacific, Middle East & North Africa, as well as Latin America & the Caribbean show a similar degree of implementation (between 0.63 and 0.72), mirroring the ambitious domestic regulatory reforms that these economies have undergone in recent years.

In contrast, the lowest level of implementation can be found among Members from Sub-Saharan Africa and South Asia, with average scores of 0.53 and 0.47 respectively, which only reflect partial implementation of the disciplines.

Figures 7 and 8 further confirm the findings of the RTAs analysis in Section 2: while higher income economies have already committed to SDR measures and implemented them domestically to a larger extent, also regions which are mainly composed of middle-income economies are progressively following the same trend with a view to promoting the transparency, predictability and efficiency of their domestic markets. Overall, more than half of the economies in our sample have already implemented at least two thirds of the SDR measures under review.

### 3.2.2 Analysis by participation in the Joint Initiative on Services Domestic Regulation

**WTO Members participating in the Joint Initiative show a greater level of implementation of SDR disciplines in their domestic regulatory frameworks. Nevertheless, more than one third of the economies studied, which are currently not participating in the negotiations, have implemented on average at least five of these disciplines.**

**Figure 9: SDR scores by participation in the Joint Initiative**

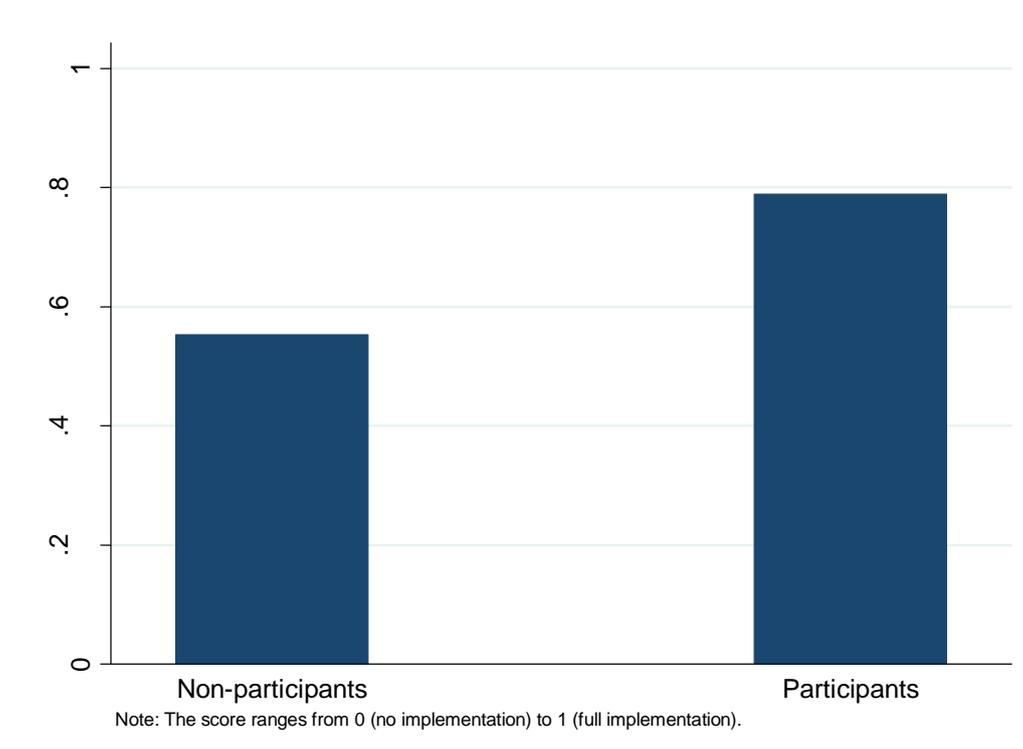


Figure 9 depicts the SDR scores for WTO Members that are participating in the Joint Initiative and those that are currently not participating in this negotiating process. Among WTO Members sponsoring the Joint Initiative, a substantial number of disciplines have already been implemented at the national level, as reflected by a relatively high score of 0.79. Turning to WTO Members currently not participating in the Joint Initiative, the score decreases to 0.55, whereby one third of these economies have introduced on average at least five of the SDR disciplines.

In this respect too, this finding appears to confirm the results of the RTAs analysis in Section 2, which demonstrated that most WTO Members who are not at present committed to an outcome in the Joint Initiative have already adopted a set of SDR disciplines in their trade agreements.

Overall, this analysis confirmed that, besides committing to SDR-related measures in the context of regional and bilateral trade agreements, many WTO Members have actually implemented them in their national regulatory regimes. Many economies, and especially middle-income economies – irrespective of whether they are currently participating in the Joint Initiative – have indeed, over recent years, undertaken broad reforms in lined with good regulatory practices to improve the domestic business environment.

## 4 POTENTIAL LINKAGES BETWEEN THE APPLICATION OF SDR DISCIPLINES AND ECONOMIC PERFORMANCE

### Key insights

- Economies that apply more SDR measures have, on average, larger domestic services sectors. Services – as the fastest-growing sector of today's global economy – create jobs and foster efficiency and competitiveness, as well as contributing to improvements in firms' competitiveness in the manufacturing sector.
- There is a positive correlation between the application of SDR measures and services trade by all four modes of supply, which suggests that a more transparent and predictable regulatory environment is related to more trade.
- Greater application of SDR measures tends to correspond to a more active engagement of economies in global value chains. The latter offer opportunities for domestic firms to integrate into international production networks and benefit from knowledge and technological spill-over effects. At the same time, since value chains rely intensively on services, the quality of services regulations plays a particularly prominent role.
- The application of SDR measures is, on average, associated with a greater level of entrepreneurship – a key tool for promoting innovation and competitiveness of markets.

### 4.1 Objective and methodology

This Paper has demonstrated so far that not only an increasing number of RTAs provide for enhanced regulatory obligations, but that Members have also introduced ambitious regulatory reforms to implement measures in line with the Joint Initiative's SDR disciplines at the national level. As the findings of the RTA and applied regime analysis confirm the growing importance of services domestic regulation at both the international and national level, the question arises how the application of the SDR disciplines is linked to economic performance.

This Section correlates SDR scores with a selection of indicators of economic performance. The correlations below use the RTAs database introduced in Section 2, in light of its broader coverage of in terms of both WTO Members and SDR disciplines.<sup>54</sup> We assume that economies that have included SDR provisions in their RTAs have implemented these obligations domestically in good faith, as required by Article 26 of the Vienna Convention on the Law of Treaties ("*Pacta sunt servanda*").<sup>55</sup> This assumption is also confirmed by our applied regime analysis in Section 3, which served as a "reality check" to show that, among all the economies, more than half have already implemented at least two thirds of the SDR measures under study in their national regulatory regimes.

An important assumption made for purposes of this analysis must be clarified: even though RTA obligations only apply among the parties, we assume that the respective domestic legislation is in fact applicable on a Most-Favored Nation basis. As set out in Section 2, this seems to be a reasonable assumption since the implementing regulations of RTAs obligations relating to licensing and qualification requirements and procedures applicable to service suppliers will in most cases not differ on the basis of the origin of trading partners.

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<sup>54</sup> Note that, while we have compiled a reliable database and constructed SDR scores on applied regimes that may serve the same purpose, the RTA sample was the preferred choice for two reasons. Firstly, the size of our RTAs database - with 74 RTAs concluded by 151 Members – is almost twice as large as for the applied regime dataset. This allows for a more comprehensive picture of the potential linkages of the SDR disciplines with economic performance, covering a greater number of Members, including at lower levels of income. Secondly, we have been able to obtain information on national regulatory environments for 14 SDR disciplines, however, the picture remains partial due to availability of data. In contrast, trade agreements are usually publicly available and thus, a complete account of the 25 SDR disciplines could be obtained.

<sup>55</sup> Article 26 of the Vienna Convention on the Law of Treaties reads: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

To explore the relationship between the application of the SDR disciplines and economic performance, SDR scores capturing the level of inclusion of SDR commitments in RTAs signed by each Member are computed. Following the methodology in Section 3, the SDR scores are defined as a simple average across the 25 SDR disciplines studied, ranging from 0 (discipline absent in RTA) to 1 (discipline included in RTA). Hard and soft obligations are equally awarded a score of 1 since the Joint Initiative foresees various flexibilities in implementing the disciplines. Our scores are thus a close reflection of the legal nature of the disciplines as designed by the Joint Initiative. Where an economy has concluded more than one RTA, the most ambitious obligation of each respective discipline is selected to enter the score. In other words, we assume implementation of the discipline when the Member has included the obligation at least once in its trade agreements.

In a second step, we calculate SDR scores for three subsets of measures corresponding to the three categories of SDR disciplines presented in Section 1. For each of the three categories, we compute simple averages across the relevant disciplines to obtain sub-scores. As a result, for each Member in our sample, four scores are available: (i) the category score for disciplines on transparency; (ii) the category score for disciplines on legal certainty and predictability; (iii) the category score for disciplines on regulatory quality and facilitation; (iv) the overall score, covering all 25 SDR disciplines. Each of these scores is then correlated with various internationally accepted indicators of economic performance.

The analysis further provides for the average scores of low, lower-middle, upper-middle, and high-income groups. This extended basis allows for a comparison across Members at different levels of income. In order to smooth potential annual fluctuations in economic performance, we calculate the average between 2010 and 2017-19 (depending on data availability) for each economic indicator.

Two limitations with respect to the chosen methodology must be highlighted. Firstly, SDR disciplines may not only influence economic performance, but the relationship is likely to work in the opposite direction too. For example, while better regulation may have boosted economic performance in many economies, it can be argued that this high performance has further allowed these Members to refine their regulatory systems. Secondly, a number of unobserved factors, other than regulation, may affect economic growth and development, including human and physical capital availability, natural resource endowments, technology uptake or the institutional framework. Since correlations cannot cater for such aspects, the analysis does not claim to draw any conclusions on causality.

Overall, the analysis provides initial insights on the positive correlation between the application of the SDR disciplines and economic performance: enhanced application of SDR measures is associated with larger domestic services sectors, more services trade by all four modes of supply, higher participation in global value chains, as well as greater entrepreneurship.

## 4.2 Correlations between services domestic regulation and economic performance

### 4.2.1 Application of SDR disciplines and relative size of the services sector

**Economies that apply more SDR measures have, on average, larger domestic services sectors.**

**Figure 10: SDR scores and services value-added**

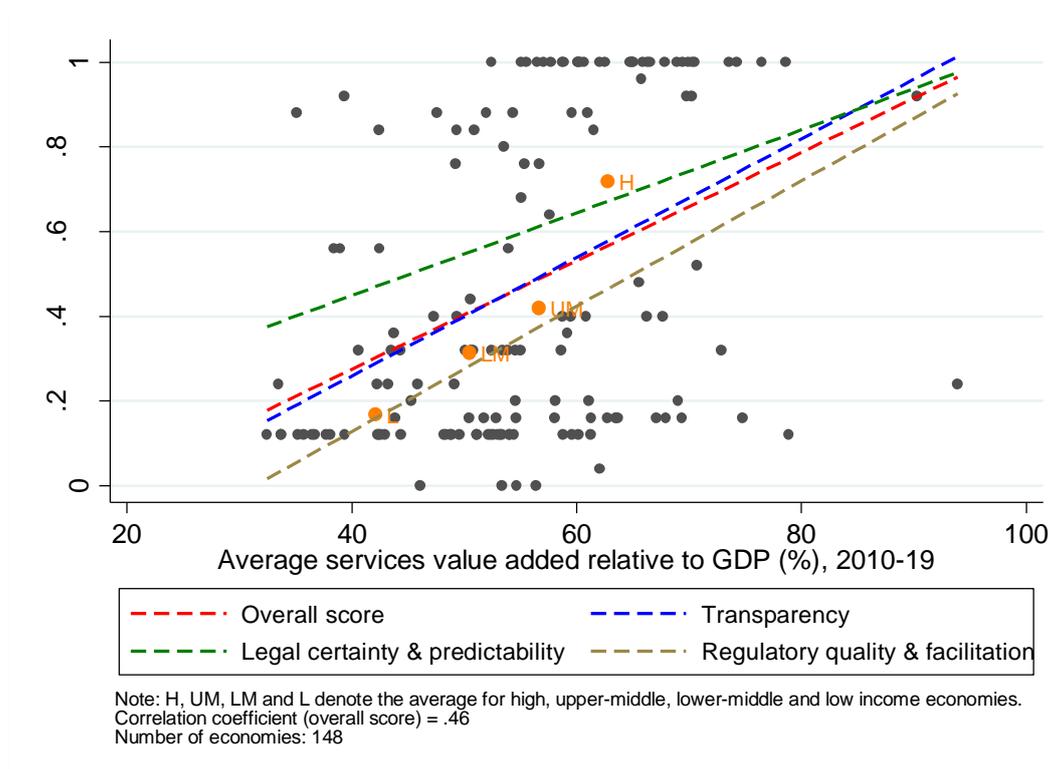


Figure 10 plots the relationship between the SDR scores and services value-added to GDP, averaged from 2010 to 2019. The percentage of services value-added relative to GDP is used to measure the size of an economy's services sector.<sup>56</sup> The correlation reveals that the relative size of the domestic services sector is positively associated with the application of SDR measures. In other words, economies that apply in practice more SDR-related measures, tend to be those where the contribution of services to GDP is higher, as opposed to agriculture and manufacturing. The correlation appears stable if one looks at both the overall score encompassing all the SDR measures (red line), as well as the specific scores for each category of disciplines. Thus, the application of each category of SDR disciplines is equally correlated with the development of the domestic services sector.

Services have become a key driver of the global economy: they have progressively transformed national economies on a massive scale and are the fastest-growing economic segment in today's interconnected world. Services create jobs, produce an efficient allocation of resources, promote firms' competitiveness and productivity, and diversify economies' output (WTO, 2019a). As they provide inputs for the whole economy, enhancing the efficiency of services can indirectly improve firms' competitiveness in the manufacturing sector (WTO, 2019a). While services and goods are increasingly intertwined, services value-added has been found to account for almost half of the value of international goods and services trade (WTO, 2019a).

<sup>56</sup> The variable is retrieved from the World Development Indicators (The World Bank, 2021).

#### 4.2.2 Application of SDR disciplines and services trade

**There is a positive correlation between the application of SDR measures and services trade by all four modes of supply.**

**Figure 11: SDR scores and services trade**

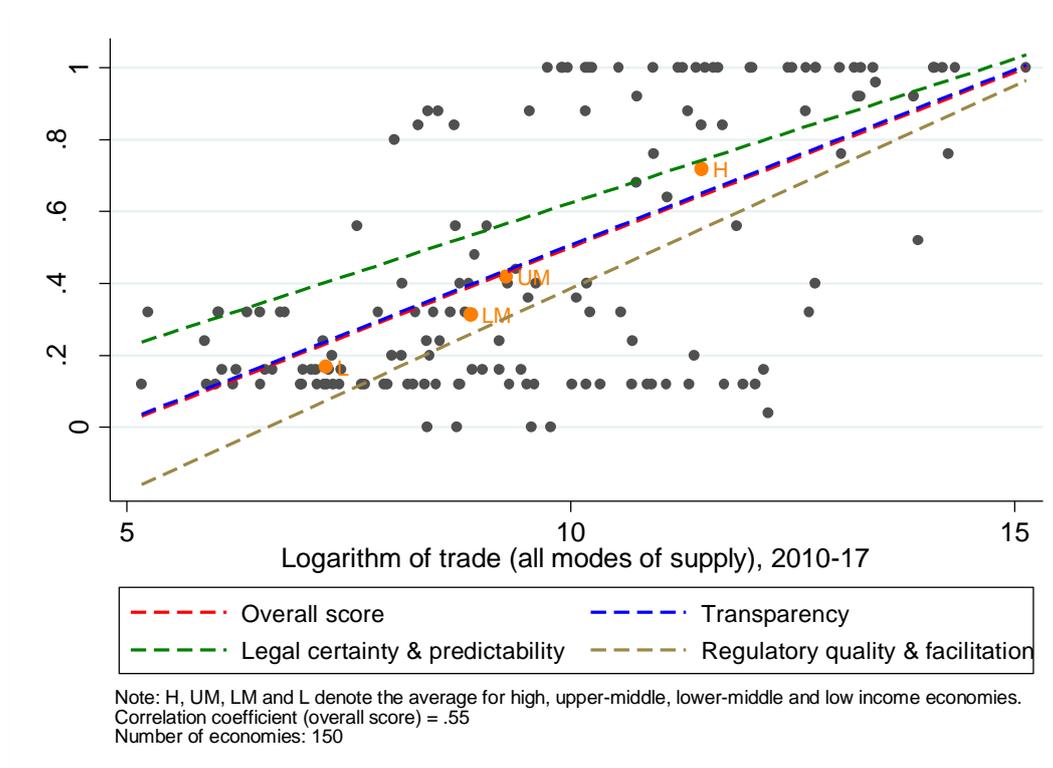


Figure 11 plots the SDR scores against the logarithm of services trade by all four modes of supply, measured as the sum of exports and imports, averaged from 2010 to 2017.<sup>57</sup> The positive slope of the fitted line suggests that economies with higher SDR scores are more actively involved in services trade. In other words, economies that apply more SDR measures trade substantially more services than economies with fewer obligations. The correlation between each SDR category's scores and the logarithm of services trade reflects closely that of the SDR overall score (red line).

Services trade by all four modes of supply has grown faster than trade in goods and it is continuing to expand dynamically (WTO, 2019a). Trade in services is critical to economic growth and development. For developing economies, services trade offers opportunities to build know-how and technological capacity and achieve competitiveness at the global level (WTO, 2019a).

Cutting red tape in regulatory frameworks is particularly crucial to improve opportunities for suppliers of all sizes to participate in services trade. It can particularly benefit micro, small and medium sized enterprises (MSMEs) and women entrepreneurs, who are typically less well-equipped to navigate opaque and costly requirements and procedures (WTO, 2019a).

<sup>57</sup> The variable is taken from TISMOS (Wettstein, et al., 2019). Please refer to footnote 6 for further information.

### 4.2.3 Application of SDR disciplines and participation in global value chains

The application of SDR measures favor, on average, more active participation in global value chains (GVCs).

Figure 12: SDR scores and GVCs participation

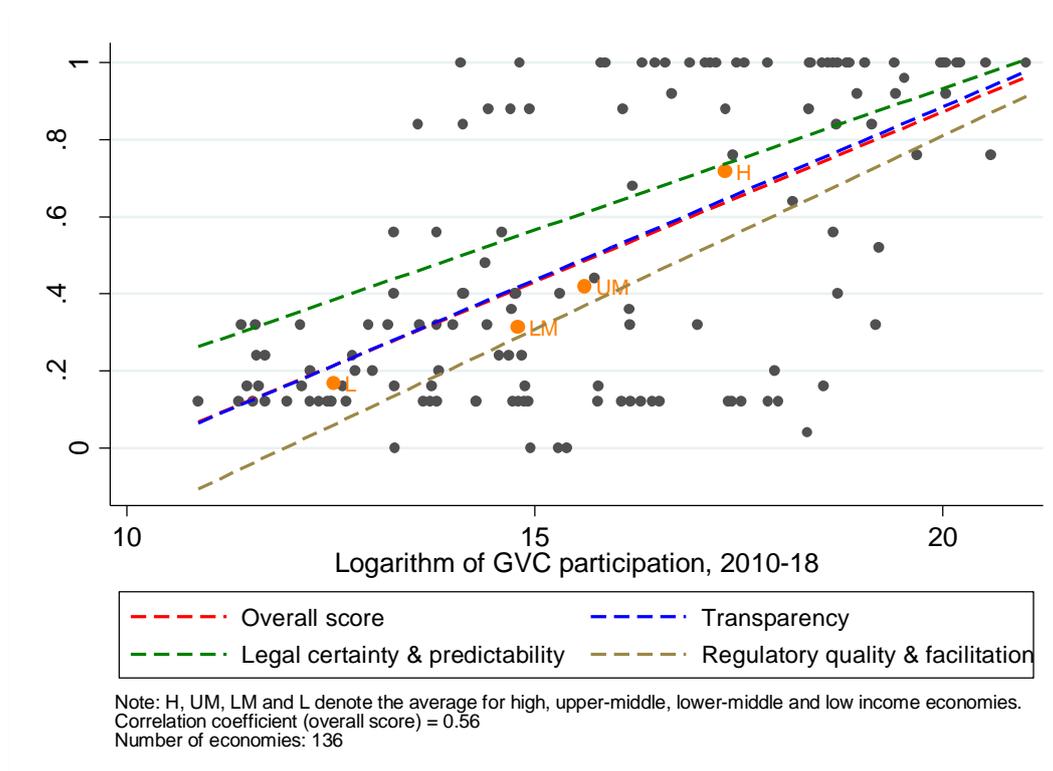


Figure 12 plots the SDR scores against the natural logarithm of GVC participation<sup>58</sup>, averaged from 2010 to 2018. The positive correlation reveals that economies that apply more SDR measures tend to be more actively involved in GVCs. The correlation coefficient for the overall SDR score (red line) is in line with the three sub-scores for each category of measures separately. This suggests that the application of all three categories of SDR 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 domestic firms, including small and medium ones, to join international production networks (WTO, 2019b). The economic benefits associated with participation in GVCs relate to increased productivity and diversification of exports. In addition, GVCs promote employment and further spill over effects, including knowledge and technological progress, skills development, and improved working conditions (WTO, 2019b). GVCs can especially foster the efficiency and competitiveness of the domestic services sector and, thereby, support the promotion of development efforts of lower-income economies (Kowalski, et al., 2015).

The fragmentation of production systems across different economies stresses the importance of sound and predictable regulatory environments. In particular, as GVCs rely intensively on services, measures on authorization requirements and procedures that regulate the supply of services play a particularly prominent role (OECD, 2013a). Hence, removing red tape and delays, as well as bridging

<sup>58</sup> GVC participation is calculated as the sum of foreign value-added in a country's own exports (backward participation) and domestic value-added in other countries' exports (forward participation). The variable is taken from the UNCTAD-Eora Global Value Chain Database (Casella, et al., 2019).

regulatory divergence is key to the effective and efficient operation of GVCs (World Economic Forum, 2018; OECD, 2013b).

#### 4.2.4 Application of SDR disciplines and entrepreneurship

**The application of SDR measures is associated with greater entrepreneurship.**

**Figure 13: SDR scores and firm entry**

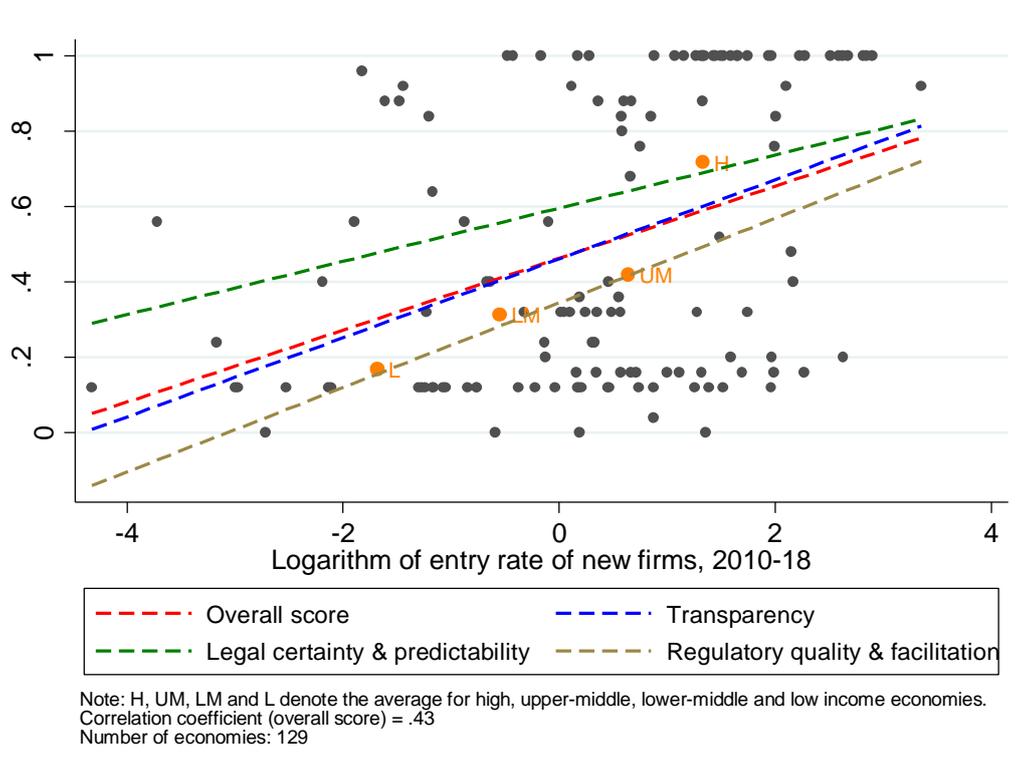


Figure 13 shows the correlation between the SDR scores and the natural logarithm of the average entry rate of new firms between 2010 and 2018, which is used as a proxy for entrepreneurship.<sup>59</sup> The upward slope of the fitted line suggests that economies with higher SDR scores (overall score for all 25 disciplines – red line) have typically a higher level of entrepreneurship in their markets. An equivalent positive correlation is also reflected in the scores for the individual SDR categories.

Entrepreneurship is essential for the development of markets as it promotes innovation and competition (Aghion, et al., 2009; Klapper, et al., 2006). In order to foster private sector growth, economies strive to create a business-friendly climate. Greater transparency and access to information can ease initial research of service suppliers for the creation of a business. Authorization procedures that facilitate start-up processes, as well as single contact points and the availability of electronic services, contribute to an increase in entrepreneurship since they entail lower entry costs for businesses (see e.g. Branstetter, et al., 2010; Klapper, et al., 2004; Klapper, et al., 2010; Klapper & Love, 2014).

In sum, this analysis shows that there is a positive correlation between the application of the SDR disciplines and economic performance: among others, a greater application of regulatory measures in line with the SDR disciplines designed by the Joint Initiative is associated with larger services sector, more international trade in services, greater participation in GVCs, and higher levels of entrepreneurship. While undertaking our analysis, we also constructed equivalent correlations using

<sup>59</sup> Business entry rate is defined as the number of newly registered LLCs per 1,000 working-age people (those 15-64). The variable is retrieved from the World Bank Entrepreneurship Database that accompanies the World Bank Doing Business Report (The World Bank, 2019).

the data on Members' applied regimes as introduced in Section 3. While the correlation coefficients appear slightly weaker – most likely given the current lack of data –the initial results also point to a positive relationship between the implementation of SDR disciplines in national regulatory frameworks and economic performance, including for specific services sectors.

## 5 CONCLUSION

The services sector is evolving rapidly in all economies and domestic regulation is increasingly at the forefront of international debates. Yet, there remain rather widespread regulatory and procedural obstacles to constrain its potential. To tackle these barriers, several international fora involved in trade policymaking, including the OECD, APEC, and the World Bank, have worked to identify good regulatory practices applicable horizontally, to services and non-services markets.

This Paper, instead, looks at the issue of domestic regulation in the field of services as understood under the GATS and further elaborated by the Joint Initiative on Services Domestic Regulation. Based on the SDR disciplines as designed by the Joint Initiative, the objective of this Paper is threefold: first, to investigate the state-of-the-art of SDR obligations in RTAs; second, to evaluate to what extent SDR measures have already been implemented in Members' regulatory frameworks; and third, to analyze potential linkages between the application of the SDR disciplines and economic performance.

To examine the prevalence of SDR obligations in RTAs, we study a sample of 74 trade agreements concluded by 151 Members. It emerges that the inclusion of SDR disciplines in RTAs is, at present, a fairly established practice – especially among "new generation" agreements concluded after 2005. Economies at all levels of income and across all regions follow this trend, with only low-income economies to a limited extent: almost 40% of the Members whose RTA drafting practice has been surveyed have adopted on average at least half of the SDR disciplines as designed by the Joint Initiative. This trend is not only reflected among the Joint Initiative's participants, but it also encompasses economies that are currently not engaged in these negotiations, most of which have already agreed to SDR provisions in their RTAs. The analysis also shows that the use of soft obligations in the field of good regulatory practices remains widespread, with on average 40% of obligations expressed in soft language. Nonetheless, in many RTAs, WTO Members have been able to include mandatory obligations, particularly in the area of legal certainty and predictability of authorization measures and procedures – whereas the corresponding SDR disciplines developed by the Joint Initiative are drafted in soft language.

Further to the widespread adoption of SDR obligations in regional and bilateral trade agreements, we analyze whether economies have already implemented SDR-related measures at the national level. While investigating domestic regulatory frameworks poses certain challenges, particularly due to lack of information, this analysis offers an overview of the actual level of implementation of SDR disciplines in a sample of 86 economies. It appears that more than half of them already implemented in their regulatory frameworks about two thirds of the disciplines under review, with only low-income economies having done so to a more limited extent. This includes both Joint Initiative's participants and non-participants, as 35% of the latter has also introduced on average at least five of the SDR disciplines as shaped by the Joint Initiative. These findings confirm the increasing importance attributed to disseminating and strengthening good regulatory practices, not only internationally but also domestically, with a view to improving the conditions of operations for service suppliers.

While the negotiations in the Joint Initiative progress steadily, we also study potential linkages between the application of the SDR disciplines and economic performance. Using the dataset on SDR obligations in RTAs – and without claiming to identify causal relationships – the analysis shows that there is a positive correlation between the application of SDR disciplines and various indicators of economic performance: among others, a greater application of SDR measures is associated with larger domestic services sectors, more services trade by all four modes of supply, higher participation in global value chains, as well as higher levels of entrepreneurship. To further support these results, we construct equivalent correlations using the data on Members' applied regimes. Such research may be expanded, when more data on Members' regulatory regimes on SDR-related measures becomes available.

The findings that emerge from the RTAs and applied regime analyses in this Paper support and strengthen each other: the work that Members are doing on their services regulatory regimes and in negotiating trade agreements is strictly interlinked. Many economies – and especially middle-income economies in the context of their development strategies – have, over recent years, undertaken broad regulatory reforms to improve the domestic business environment. To clearly signal their commitment to good regulatory practices in the international arena, they have agreed to obligations on SDR-related matters in the context of bilateral and regional trade agreements. But

the adoption of RTAs can in itself represent a further drive to domestic regulatory reforms, to enhance transparency and streamline procedural red tape.

At a time when more and more RTAs that include SDR-related obligations are being negotiated, the Joint Initiative's negotiations are seeking to consolidate a set of internationally recognized best practices within the WTO legal framework. An outcome on services domestic regulation would not only constitute a global benchmark for locking in good regulatory practices for services markets, but the greater level of coherence at the international level that will result from such an outcome would provide new opportunities for service suppliers to participate in international trade.

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## ANNEX

**Table A.1: Analysis on regional and bilateral trade agreements – List of agreements**

Name of RTA	Year of entry force
1. Regional Comprehensive Economic Partnership (RCEP)*	Not in force
2. New EU – MERCOSUR Agreement in principle announced in 2019*	Not in force
3. New EU – Mexico Agreement in principle announced in 2018*	Not in force
4. Indonesia – Australia	2020
5. Pacific Agreement on Closer Economic Relations Plus (PACER Plus)	2020
6. United States – Mexico – Canada Agreement (USMCA/CUSMA/T-MEC)	2020
7. China – Mauritius	2021
8. United States - Ecuador Protocol on Trade Rules and Transparency to Trade and Investment Council (TIC) Agreement*	2020
9. EU – Viet Nam	2020
10. Peru – Australia	2020
11. Hong Kong, China – Australia	2020
12. African Continental Free Trade Area (AfCFTA)*	2019
13. EU – Armenia	2019
14. EU – Japan	2019
15. EU – Singapore	2019
16. China – Georgia	2018
17. Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)	2018
18. EFTA – Philippines	2018
19. EU - Canada	2017
20. Hong Kong, China – Macao, China	2017
21. Turkey – Singapore	2017
22. Eurasian Economic Union (EAEU) – Viet Nam	2016
23. Japan – Mongolia	2016
24. Pacific Alliance	2016
25. ASEAN – India	2015
26. Australia – China	2015
27. Canada – Korea, Republic of	2015
28. China - Korea, Republic of	2015
29. Japan – Australia	2015
30. Korea, Republic of – New Zealand	2015
31. EU – Georgia	2014
32. EU - Moldova, Republic of	2014
33. Hong Kong, China – Chile	2014
34. Iceland – China	2014
35. Korea, Republic of – Australia	2014
36. Switzerland – China	2014

37.	Asia Pacific Trade Agreement (APTA)	2013
38.	EU - Central America	2013
39.	Gulf Cooperation Council (GCC) – Singapore	2013
40.	Malaysia – Australia	2013
41.	Ukraine - Montenegro	2013
42.	EU – Colombia and Peru (Accession of Ecuador in 2017)	2013
43.	EFTA – Ukraine	2012
44.	Japan – Peru	2012
45.	Mexico – Central America	2012
46.	United States – Colombia	2012
47.	Korea, Republic of – United States	2012
48.	United States – Panama	2012
49.	Southern African Development Community (SADC) Protocol on Trade in Services*	2012
50.	China - Costa Rica	2011
51.	EU - Korea, Republic of	2011
52.	Hong Kong, China - New Zealand	2011
53.	India – Japan	2011
54.	India – Malaysia	2011
55.	ASEAN – Australia – New Zealand	2010
56.	EU – Albania	2009
57.	Colombia – Northern Triangle (El Salvador, Guatemala, Honduras)	2009
58.	Common Market for Eastern and Southern Africa (COMESA) Regulation on Trade in Services*	2009
59.	Japan – Switzerland	2009
60.	United States – Oman	2009
61.	United States – Peru	2009
62.	Brunei Darussalam – Japan	2008
63.	El Salvador- Honduras - Chinese Taipei	2008
64.	EU – CARIFORUM States	2008
65.	Japan – Philippines	2008
66.	Pakistan – Malaysia	2008
67.	Dominican Republic – Central America – United States Free Trade Agreement (CAFTA – DR)	2006
68.	Jordan – Singapore	2005
69.	India – Singapore	2005
70.	Southern Common Market (MERCOSUR)	2005
71.	EU - North Macedonia	2004
72.	Singapore – Australia	2003
73.	United States – Jordan	2001
74.	Economic Community of West African States (ECOWAS)*	1995

**Note:** \* Agreements not yet notified to the WTO under Article V of the GATS.

**Table A.2: Analysis on regional and bilateral trade agreements – List of SDR disciplines**

**DISCIPLINES ON TRANSPARENCY**

Publish information necessary to comply with requirements and procedures, including online

Establish mechanisms for responding to enquiries from service suppliers

Publish in advance measures before adoption

Provide opportunity for comments to interested persons

Consider comments received from interested persons

Explain purpose and rationale of proposed measures

**DISCIPLINES ON LEGAL CERTAINTY AND PREDICTABILITY**

Establish indicative timeframe for processing application

Inform about status of application

Process application within reasonable timeframe

Inform applicant of decision on application

Allow applicants to correct minor deficiencies in incomplete applications and identify additional information required

Inform applicant of reasons for rejection of application and allow resubmission

Ensure that granted authorization enters into effect without undue delay

Schedule examinations at frequent intervals

Allow reasonable time between publication of measures and entry into force

**DISCIPLINES ON REGULATORY QUALITY AND FACILITATION**

Consolidate relevant information for service suppliers in single online portal

Avoid requiring applicant to approach more than one competent authority for authorization

Permit submission of application at any time throughout the year

Allow reasonable periods of time for submission of application

Accept application in electronic format

Accept authenticated copies of documents

Ensure that authorization fees are reasonable, transparent, and not in themselves restrictive of service supply

Ensure independence of competent authorities from service suppliers

Base authorization measures on objective and transparent criteria

Ensure that procedures are impartial and adequate to demonstrate compliance with requirements

**Table A.3: Analysis on regulatory frameworks – List of SDR measures and sources**

MEASURE	SOURCES
Single window for submission of applications	<ul style="list-style-type: none"> <li>• World Bank-WTO Services Trade Policy Database</li> <li>• World Bank-WTO Licensing Survey (2015) (not publicly available)</li> <li>• OECD Product Market Regulation Indicator (2018)</li> <li>• Manual data collection from domestic regulations and official government/ministry websites</li> </ul>
Electronic submission of license applications	<ul style="list-style-type: none"> <li>• World Bank-WTO Services Trade Policy Database</li> <li>• World Bank-WTO Licensing Survey (2015) (not publicly available)</li> <li>• OECD Product Market Regulation Indicator (2018)</li> <li>• Manual data collection from domestic regulations and official government/ministry websites</li> </ul>
Licensing decision within a certain period required	<ul style="list-style-type: none"> <li>• World Bank-WTO Services Trade Policy Database</li> <li>• OECD STRI Regulatory Database (2016 version)</li> <li>• Information derived from mandatory obligations included in RTAs</li> <li>• Manual data collection from domestic regulations and official government/ministry websites</li> </ul>
Obligation to inform applicants on status of application	<ul style="list-style-type: none"> <li>• GATS Article VI:3</li> </ul>
Obligation to inform applicants on decision of application	<ul style="list-style-type: none"> <li>• GATS Article VI:3</li> </ul>
Obligation to inform applicants of reasons for license rejection	<ul style="list-style-type: none"> <li>• World Bank-WTO Services Trade Policy Database</li> <li>• OECD STRI Regulatory Database (2016 version)</li> <li>• World Bank-WTO Licensing Survey (2015) (not publicly available)</li> <li>• Information derived from mandatory obligations included in RTAs</li> <li>• Manual data collection from domestic regulations and official government/ministry websites</li> </ul>
License criteria publicly available	<ul style="list-style-type: none"> <li>• World Bank-WTO Services Trade Policy Database</li> <li>• OECD STRI Regulatory Database (2016 version)</li> <li>• World Bank-WTO Licensing Survey (2015) (not publicly available)</li> <li>• For economies covered by the OECD STRI Regulatory Database, and where information was not available from other sources, a positive answer is assumed</li> </ul>
Consolidation of the information on licensing and authorization in a single online portal	<ul style="list-style-type: none"> <li>• World Bank-WTO Services Trade Policy Database</li> <li>• OECD Product Market Regulation Indicator (2018)</li> <li>• Manual data collection from domestic regulations and official government/ministry websites</li> </ul>

Enquiry points	<ul style="list-style-type: none"> <li>• World Bank-WTO Services Trade Policy Database</li> <li>• World Bank-WTO Licensing Survey (2015) (not publicly available)</li> <li>• OECD Product Market Regulation Indicator (2018)</li> <li>• Manual data collection from domestic regulations and official government/ministry websites</li> <li>• EU Services Directive (2006/123/EC)</li> </ul>
Publication of proposed laws and regulations	<ul style="list-style-type: none"> <li>• World Bank Global Indicators of Regulatory Governance (2018)</li> </ul>
Public comments procedures open to interested persons, including foreign suppliers	<ul style="list-style-type: none"> <li>• World Bank-WTO Services Trade Policy Database</li> <li>• OECD STRI Regulatory Database (2016 version)</li> </ul>
Consideration of comments received by interested persons and other countries on proposed laws and regulations	<ul style="list-style-type: none"> <li>• World Bank-WTO Services Trade Policy Database</li> <li>• World Bank Global Indicators of Regulatory Governance (2018)</li> </ul>
Explanations on purpose and rationale of proposed regulation	<ul style="list-style-type: none"> <li>• World Bank Global Indicators of Regulatory Governance (2018)</li> </ul>
Prior notice of regulatory changes	<ul style="list-style-type: none"> <li>• World Bank-WTO Services Trade Policy Database</li> <li>• OECD STRI Regulatory Database (2016 version)</li> </ul>

**Table A.4: Analysis on regulatory frameworks – List of economies covered**

Note: Participants of the Joint Initiative on Services Domestic Regulation (as of 20 July 2021) are marked in **bold**.

1. <b>Albania</b>	44. Mali
2. <b>Argentina</b>	45. <b>Mauritius</b>
3. <b>Australia</b>	46. <b>Mexico</b>
4. <b>Austria</b>	47. <b>Moldova, Republic of</b>
5. Bangladesh	48. <b>Montenegro</b>
6. <b>Belgium</b>	49. Morocco
7. <b>Brazil</b>	50. Mozambique
8. Burkina Faso	51. Myanmar
9. Cameroon	52. Namibia
10. <b>Canada</b>	53. <b>Netherlands</b>
11. <b>Chile</b>	54. <b>New Zealand</b>
12. <b>China</b>	55. Niger
13. <b>Colombia</b>	56. <b>Nigeria</b>
14. <b>Costa Rica</b>	57. <b>North Macedonia</b>
15. Côte d'Ivoire	58. <b>Norway</b>
16. <b>Czech Republic</b>	59. Oman
17. <b>Denmark</b>	60. Pakistan
18. Dominican Republic	61. Panama
19. Ecuador	62. <b>Peru</b>
20. Egypt	63. Philippines
21. <b>Estonia</b>	64. <b>Poland</b>
22. <b>Finland</b>	65. <b>Portugal</b>
23. <b>France</b>	66. <b>Russian Federation</b>
24. Gabon	67. Sierra Leone
25. <b>Germany</b>	68. Singapore
26. Ghana	69. <b>Slovak Republic</b>
27. <b>Greece</b>	70. <b>Slovenia</b>
28. <b>Hong Kong, China</b>	71. South Africa
29. <b>Hungary</b>	72. <b>Spain</b>
30. <b>Iceland</b>	73. Sri Lanka
31. India	74. <b>Sweden</b>
32. Indonesia	75. <b>Switzerland</b>
33. <b>Ireland</b>	76. <b>Chinese Taipei</b>
34. <b>Israel</b>	77. Tanzania
35. <b>Italy</b>	78. <b>Thailand</b>
36. <b>Japan</b>	79. Tunisia
37. <b>Kazakhstan</b>	80. <b>Turkey</b>
38. Kenya	81. Uganda
39. <b>Korea, Republic of</b>	82. <b>Ukraine</b>
40. <b>Latvia</b>	83. <b>United Kingdom</b>
41. <b>Lithuania</b>	84. <b>United States</b>
42. <b>Luxembourg</b>	85. <b>Uruguay</b>
43. Malaysia	86. Viet Nam