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**World Trade Organization**

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**REGULATORY DISCIPLINES ON THE MOBILITY OF SERVICE PROFESSIONALS –  
LESSONS FROM REGIONAL TRADE AGREEMENTS**

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# REGULATORY DISCIPLINES ON THE MOBILITY OF SERVICE PROFESSIONALS – LESSONS FROM REGIONAL TRADE AGREEMENTS

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## ABSTRACT

When it comes to services traded through the international movement of individuals (mode 4), Regional Trade Agreements (RTAs) have increasingly adopted trade-facilitating disciplines that both build upon and innovate the GATS framework. By analysing relevant provisions of RTAs, we are able to identify trends and commonalities in approach. We find that mode 4 RTA disciplines address mostly aspects related to transparency and application procedures. With the exception of low-income economies, these provisions have been adopted in RTAs concluded by WTO Members across all income levels and all geographic regions, albeit with differing intensity. This points to the potential for some of the improvements and innovations captured in RTAs to be considered in a wider, possibly multilateral, context.

**Keywords:** temporary movement of natural persons, GATS mode 4, Regional Trade Agreements, regulatory disciplines

**JEL classification codes:** F-13; F-15; F-22; L-8; and K-33

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<sup>1</sup> This is a working paper, and hence it represents research in progress. This paper represents the opinions of individual staff members 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. The authors are grateful to Laura Baiker, Elena Bertola, Xiaolin Chai and Markus Jelitto (Trade in Services and Investment Division, WTO) for their useful comments on earlier drafts of this Paper. Any errors remain the responsibility of the authors.

## INTRODUCTION

It may initially come as a surprise that the WTO rulebook includes disciplines on the cross-border movement of individuals in connection with the supply of services. The intangible, non-storable nature of most services, however, helps clarify this conundrum. In order for numerous services to be transacted, suppliers and consumers need to be in physical proximity with one another. This is why, to account for the different ways in which services may be supplied internationally, the WTO's General Agreement on Trade in Services (GATS) adopted a very wide notion of trade in services, encompassing four distinct "modes of supply".

One such mode, mode 4, is the supply of services through the movement abroad of natural persons. As a result, the WTO disciplines certain aspects related to the international mobility of individuals. However, it does not do so as an end in itself, but rather as a means to an end, that of trading services.

WTO Members have undertaken commitments that guarantee a certain degree of market opening for mode 4 trade. They have done so both multilaterally, under the GATS, as well as under Regional Trade Agreements (RTAs).<sup>2</sup> While RTAs have generally granted a higher degree of mode 4 access compared to the GATS,<sup>3</sup> the progress they have achieved is, overall, fairly modest. There is one area, nevertheless, where RTAs have added significant value compared to the GATS, namely by building on GATS and setting novel regulatory disciplines that facilitate mode 4 trade.

When it comes to fostering services traded through the movement of natural persons, RTA participants have demonstrably felt the need to look beyond mode 4 access guarantees and consider whether regulatory measures related to entry and temporary stay affected their suppliers' ability to trade services. Although relevant regulatory measures are normally motivated by public policy considerations, such as protecting the integrity of borders and the orderly movement of foreign individuals into a Member's territory, they may nevertheless have unnecessary trade-restrictive effects. To mitigate these effects, a growing number of WTO Members has crafted specific RTA disciplines that build upon or add to those found in the GATS (so called "GATS-plus").

The objective of this working paper is to provide an overview and assessment of these disciplines in RTAs. It is structured as follows. Section 1 briefly presents the scope of mode 4 and relevant GATS disciplines. Section 2 sheds light on the RTAs that include regulatory provisions on the movement of natural persons, detailing how these Agreements have evolved over time, geography and Parties' level of economic development. Section 3 describes the substantive rules contained in these RTAs and assesses their prevalence across Agreements. It also discusses how the provisions build on the disciplines contained in the GATS. Finally, Section 4 concludes.

### 1 WHAT IS MODE 4 AND WHAT ARE RELEVANT GATS OBLIGATIONS?

The presence of natural persons, otherwise referred to as mode 4, is one of the four possible "modes" through which services may be traded under the GATS. The Agreement defines mode 4 as entailing the "supply of a service [...] by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member".<sup>4</sup>

The scope of mode 4 is further elaborated in the "Annex on Movement of Natural Persons Supplying Services under the Agreement" (hereinafter, "the Annex"). The Annex stipulates that two types of individuals are covered by mode 4: persons who are "service suppliers of a Member" and persons of a Member who are "employed by a service supplier of a Member in respect of the supply of a service". The first type corresponds to self-employed individuals providing services, pursuant to a contract concluded directly with consumers in the host country. The second type covers foreign individuals employed by service suppliers "of another Member".<sup>5</sup>

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<sup>2</sup> Agreements liberalizing trade in services concluded by WTO Members with a subset of trading partners are known as Economic Integration Agreements (EIAs) in the terminology of GATS Article V. However, this paper will refer to Regional Trade Agreements (RTAs), as this is the term that is more generally used. It is understood as covering various forms of EIAs covering trade in services, including agreements that are bilateral or include multiple economies that do not belong to the same geographic region.

<sup>3</sup> This is effectively a requirement. Article V of the GATS stipulates that RTAs must provide for the "absence or elimination of substantially all discrimination" between the Parties and that there be no "a priori exclusion of any mode of supply".

<sup>4</sup> GATS Article I.2(d).

<sup>5</sup> For further discussion on the scope of mode 4, see, for instance WTO, "Presence of Natural Persons (Mode 4)", Background Note by the Secretariat, document S/C/W/301.

The Annex further specifies that the GATS "shall not apply to measures affecting natural persons seeking access to the employment market of a Member", nor to "measures regarding citizenship, residence or employment on a permanent basis". The latter exclusion explains why mode 4 is commonly referred to as the "temporary" presence of natural persons. The exact timeframe for "temporariness" is determined by each Member in its schedule of commitments, i.e., the document that details the services sectors that have been opened up to trade and the extent of that openness that has been guaranteed.

In terms of GATS obligations, although essentially all are applicable to services traded via mode 4, some are especially relevant for the purpose of the analysis in this paper, namely Article III on transparency, Article IV on increasing the participation of developing countries, and Article VI on domestic regulation. It is important to underline, however, that relevant GATS disciplines are horizontal in nature and not specifically targeted at mode 4, which is a first element distinguishing them from corresponding mode 4 disciplines in RTAs.

Starting with transparency, the first two paragraphs of Article III require WTO Members to "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 [the] Agreement" and, where publication is not practicable, to make "such information [...] otherwise publicly available". Furthermore, paragraph 3 lays out the obligation for each Member to "promptly and at least annually inform the Council for Trade in Services of the introduction of new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments".

Article III also contains an obligation, under paragraph 4, for all Members to "respond promptly to all requests by any other Member for specific information on any of its measure of general application" and establish "enquiry points to provide, upon request, specific information to other Members on all such matters [...]". Building upon this obligation on enquiry points, Article IV:2 requires instead the establishment of "contact points", stipulating that "developed country Members, and to the extent possible other Members, shall establish contact points [...] to facilitate the access of developing country Members' services suppliers to information" related to their markets. The key distinction between these two obligations is that enquiry points, which have to be set up by all Members, respond to enquiries coming from Members (i.e., governments), whereas contact points, which are to be established only by developed Members, serve the information needs of service suppliers, and only those from developing Members, by facilitating access to relevant information. The fact that only specific sets of Members are bound by, and benefit from, these obligations is a second aspect that differentiates the provisions of the GATS from those found in RTAs, which, as will be discussed in Section 3, may apply to all Parties to a specific RTA, irrespective of their level of development.

When it comes to the disciplines on domestic regulation contained in Article VI, two provisions may be viewed as relevant. First, paragraph 1, which requires Members, in sectors where they have undertaken specific commitments, to ensure that "all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner". This particular discipline has not been further elaborated for mode 4 application in RTAs, possibly because several relevant measures may be specific to given individuals, rather than "of general application". Second, paragraph 3, which stipulates that, "when authorization is required for the supply of a service on which a specific commitment has been made", Members' competent authorities shall "within a reasonable period of time after the submission of an application considered complete [...], inform the applicant of the decision concerning the application" and, at the request of the applicant, "provide, without undue delay, information concerning the status of the application". As will be explained further below, this GATS provision applies only in instances where an "authorization to supply a service" is at play and a specific commitment exists for the sector in question, whereas corresponding mode 4 disciplines in RTAs do not generally require that these two conditions be fulfilled.<sup>6</sup> This is the third distinguishing feature of RTA and GATS provisions.

## **2 OCCURRENCE OF MODE 4 REGULATORY DISCIPLINES IN RTAS**

Since the creation of the WTO in 1995 and up to the end of 2021, 115 WTO Members<sup>7</sup> have concluded and notified to the WTO 183 RTAs covering trade in services (also referred to as "services RTAs").

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<sup>6</sup> The "authorisation" referred to in RTAs is for entry and stay into the territory of the other Party(ies).

<sup>7</sup> For the purpose of the analysis, EU Member States are counted individually, i.e., 28 Members until 31 December 2020, and 27 thereafter. The United Kingdom was originally a Party to the EU–Japan and

Of these RTAs, 100, signed by 72 Members<sup>8</sup>, include regulatory disciplines related to mode 4: these are the 100 Agreements we examine in this paper (also referred to as "our sample"), and are listed in Annex 1.

In our analysis, whenever a Member has included a mode 4 discipline in more than one of its RTAs, this is only counted once. Hence, the information by Member reveals the percentage (or number) of Members that have included a specific discipline at least once in their Agreements.

It is important to note that relevant RTA disciplines apply to cross-border movements of individuals that include, but are not limited to, mode 4 of the GATS. In fact, many Agreements include disciplines in a stand-alone chapter<sup>9</sup>, on the "temporary movement of businesspersons", which is intended to facilitate the cross-border mobility of given categories of individuals irrespective of their sector of activity, and therefore not exclusively in the services sector. As such, RTA provisions cover both "pure" mode 4, related to the supply of services, as well as movements of businesspeople in non-services sectors. In the discussion that follows, we will refer to "mode 4", for ease of reference, but our analysis is applicable to all kinds of temporary business mobility. Indeed, it is notable that, in their RTAs, WTO Members have recognized that facilitating international mobility is essential for trade beyond just trade in services.

## 2.1 Chronological occurrence

The increase in the number of services RTAs over the past twenty years has been accompanied by the progressive adoption of GATS-plus mode 4 obligations in these Agreements.

While disciplines on mode 4 can be found in a few of the services RTAs concluded soon after the creation of the WTO in 1995, with the first RTA of this kind being the Canada–Chile Agreement of 1997, it is only starting in 2004 that the practice accelerated and deepened. Before then, only 16 WTO Members had concluded an RTA with GATS-plus regulatory obligations on mode 4. By 2010, this figure had doubled to 32 Members, and it had more than doubled again, to 72 Members, by 2021.<sup>10</sup>

Since 2004, GATS-plus mode 4 disciplines are found in the majority of the RTAs that entered into force each year (except for the years 2005, 2013 and 2021), with peaks exceeding 80% in 2011, 2019 and 2020, as Figure 2.1A shows.

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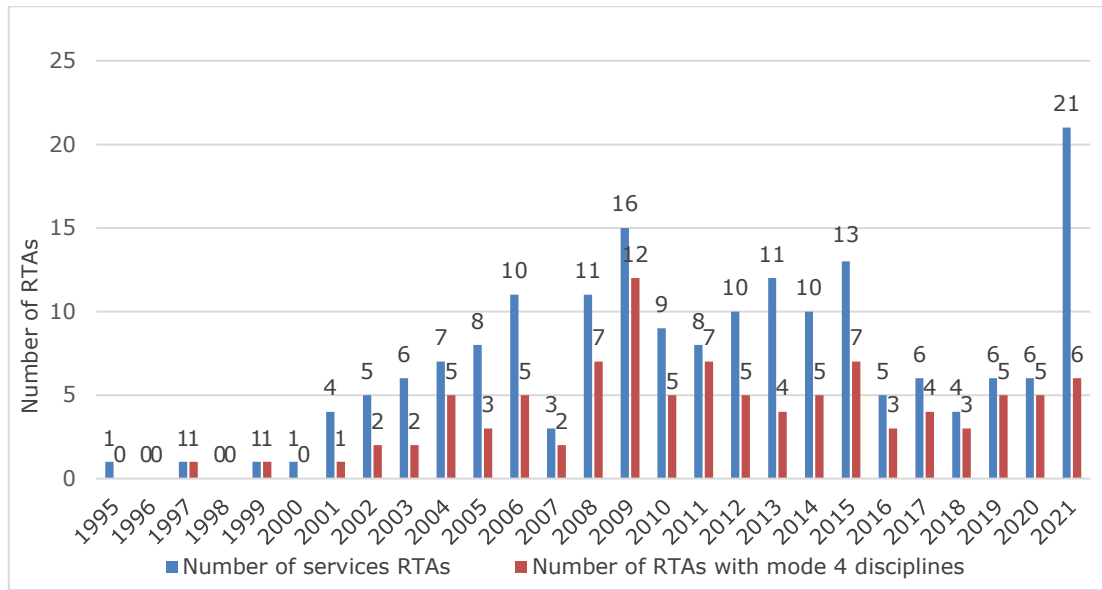
EU-Canada Agreements, but it ceased to be an EU Member State on 31 January 2020 and, following the end of the transition period with the EU on 31 December 2020, ceased to be a Party to both of these Agreements.

<sup>8</sup> The total number of Members concerned would be 73, but Macao, China's only Agreement with mode 4 disciplines, concluded with Hong Kong, China, foresees the applicability of relevant disciplines only to Hong Kong, China. Hence, the total number of Members is 72.

<sup>9</sup> Although in the majority of cases these disciplines are included in a separate section or chapter of RTAs, in some instances they are found in schedules of commitments, under "Additional Commitments". In this regard, it should be noted that our analysis has focused exclusively on mode 4 disciplines, and has not considered their possible interaction with other RTA provisions.

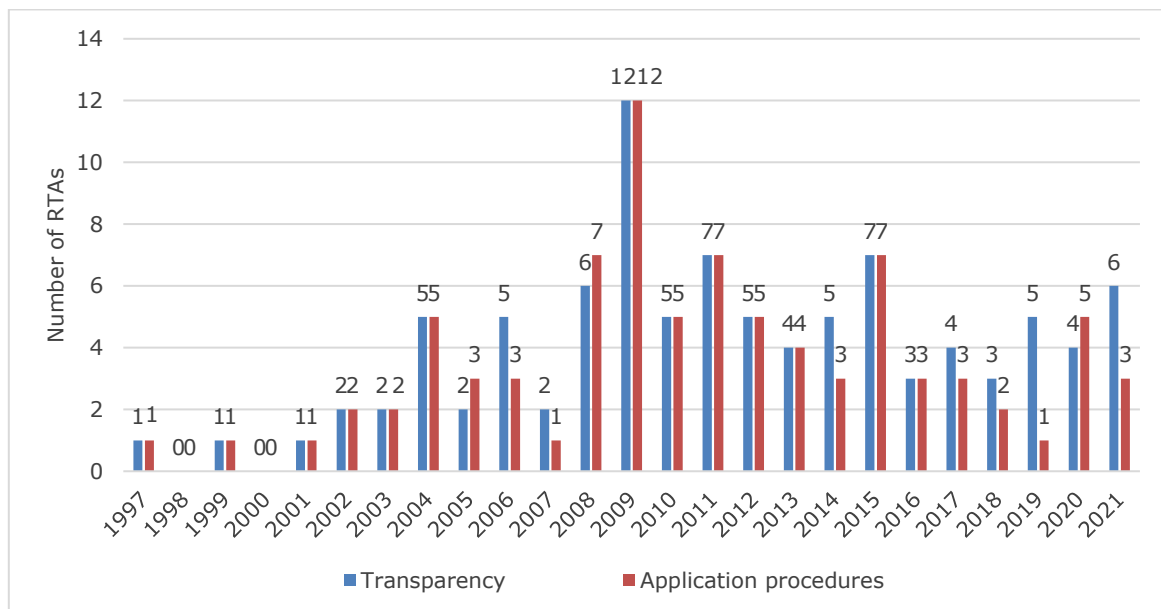
<sup>10</sup> The data for 2021 is not fully representative as it is heavily influenced by the numerous RTAs concluded that year by the United Kingdom following its withdrawal from the European Union.

**Figure 2.1A**  
**RTAs with mode 4 disciplines, by year**



As will be discussed in more detail in Section 3, mode 4 regulatory disciplines in RTAs are of two main kinds: those related to transparency and those concerning application procedures. As Figure 2.1B illustrates, whereas virtually all RTAs in our sample contain transparency provisions<sup>11</sup>, disciplines on application procedures are included in slightly fewer Agreements (86). Specifically, our analysis shows that, whereas in the "early years" all Agreements tended to include both kinds of provisions, this trend has somewhat tapered off over more recent years. In fact, after 2016, provisions on application procedures have been less frequently incorporated in new RTAs than transparency procedures, with 2020 as the only exception.

**Figure 2.1B**  
**RTAs with mode 4 disciplines, by main kind, by year**



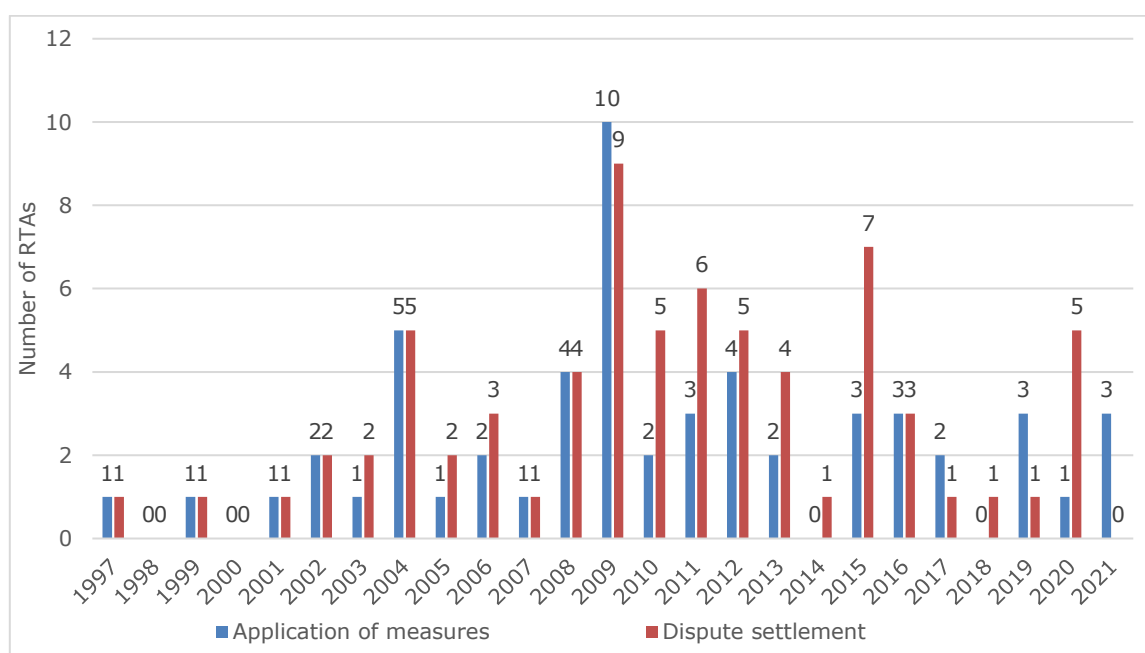
We have also identified two additional types of mode 4 disciplines that have been included in RTAs, namely those concerning "application of measures" and recourse to dispute settlement. As

<sup>11</sup> 97 out of 100 RTAs, signed by 68 Members, include transparency disciplines.

Figure 2.1C illustrates, 55% of the Agreements in our sample include an obligation for the "expeditious" application of mode 4 measures<sup>12</sup>, and 70% stipulate conditions to access dispute settlement.

We do not analyse these latter two types of disciplines in further detail. The provisions on expeditious application exhibit very limited variation and are very broadly drafted, rendering a deeper assessment futile. The disciplines on dispute settlement, instead, are quite unique in that they do not add value to the mode 4 disciplines of the GATS. In fact, the purpose of these disciplines is to limit recourse to the RTA dispute resolution system, whereas no comparable conditionalities exist under the GATS. 70%<sup>13</sup> of RTAs with mode 4 disciplines set two conditions to access the Agreements' dispute settlement system, namely that the matter involve a pattern of practice and that affected natural persons exhaust available domestic administrative remedies first.<sup>14</sup> With regard to the latter condition, the vast majority of RTAs include a time period when remedies are considered to be exhausted.<sup>15</sup>

**Figure 2.1C**  
**RTAs with mode 4 disciplines on application of measures and dispute settlement, by year**



## 2.2 Income-level occurrence<sup>16</sup>

With the notable exception of low-income economies, WTO Members across all other income levels have included mode 4 disciplines in their RTAs, with high-income economies accounting for the bulk of these Members. Indeed, as Figure 2.2A illustrates, out of all the high-income Members with services RTAs, 79% have included mode 4 provisions in at least one of their Agreements. When it comes to Members in the upper-middle income group, this share falls to 46%, and it stands at 58%

<sup>12</sup> Counted under this category are also provisions requiring that measures concerning the movement of natural persons be applied in a manner that avoids unduly impairing trade.

<sup>13</sup> Although the China-New Zealand RTA contains disciplines on access to dispute settlement, it does not condition this access on the fulfilment of specific conditions. As such, it has not been included in this analysis.

<sup>14</sup> See, for instance, Hong Kong, China-Australia (2020), Chapter 10, Article 10.7.

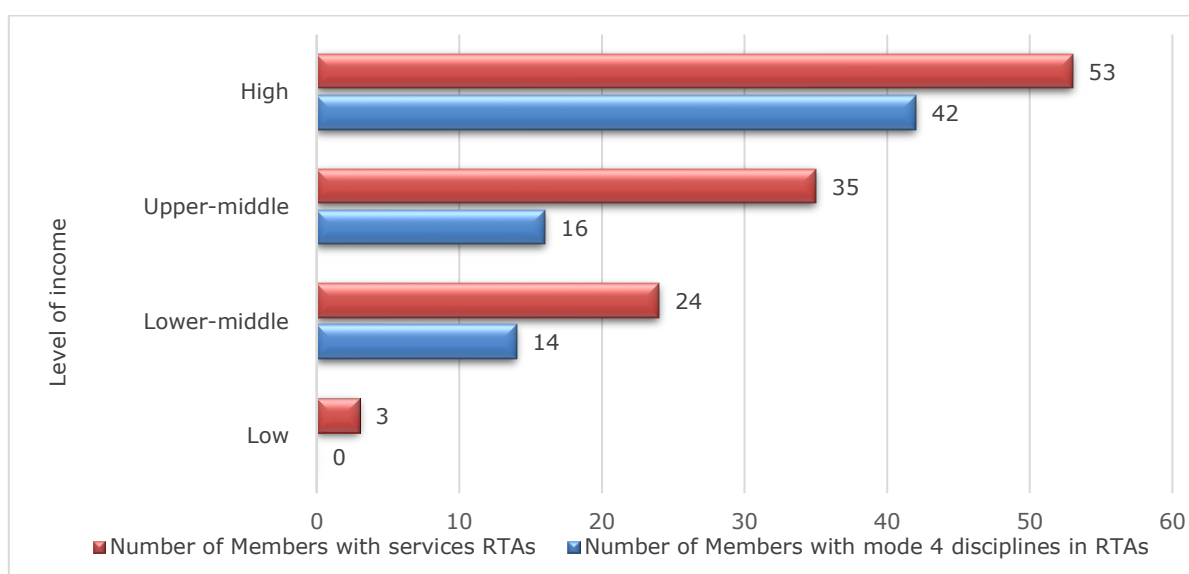
<sup>15</sup> In fourth-fifth of these Agreements this period is set as a specific length of time (12 months in 37 RTAs, 6 months in 17, and 24 months in one instance) and in a few cases as a "reasonable period of time" (see, for instance, Peru-Australia (2020), Chapter 11, Article 11.9.2). 13% of RTAs with a remedy exhaustion clause, however, set no particular timeframe (see, for instance, Indonesia-Australia (2020), Chapter 12, Article 12.8).

<sup>16</sup> Following the classification of income groups by the World Bank, the mode 4 RTAs in our analysis involve 42 high-income economies, 16 upper-middle-income economies, 14 lower-middle-income economies, and no low-income economies. For further information on the World Bank classification of income groups, see <https://datatopics.worldbank.org/world-development-indicators/the-world-by-income-and-region.html>.

for Members in the lower-middle income group. It should be noted, however, that these figures provide no indication of the breadth of scope of the specific disciplines adopted.

Agreements concluded between high- and upper-middle income economies are the most numerous (33), followed by RTAs concluded exclusively among high-income Members (25), RTAs between high- and lower-middle income Members (16), Agreements among upper-middle income Members (12) and Agreements concluded among upper-middle- and lower-middle income Members (9). In addition, some RTAs (5) include Members from all income levels, such as CPTPP.

**Figure 2.2A**  
**Members with mode 4 disciplines in RTAs, by income level**



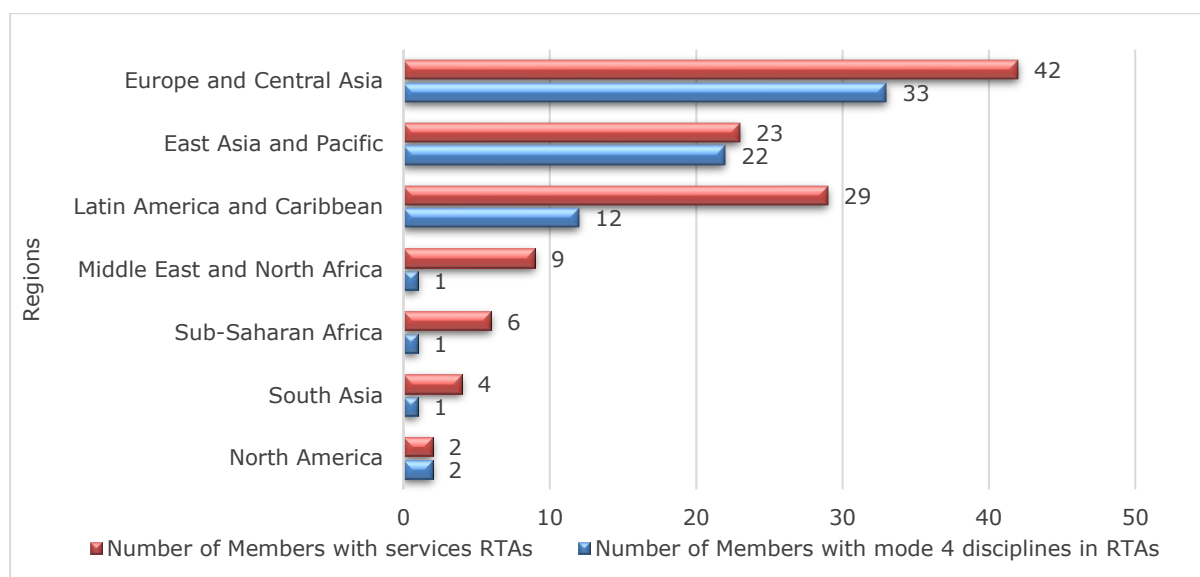
### 2.3 Regional occurrence<sup>17</sup>

Mode 4 regulatory disciplines are found in RTAs adopted across all regions of the world, although with different intensity. As Figure 2.3A illustrates, Members from the Middle East & North Africa (11%), Sub-Saharan Africa (17%) and South Asia (25%) are relatively less represented, even if the information for these groupings cannot be taken as representative of broader regional trends given that each comprise only one Member when it comes to mode 4 RTA disciplines. On the other hand, all Members from North America that have signed a services RTA have included mode 4 regulatory disciplines. Members from the East Asia and Pacific region (96%), Europe and Central Asia (79%) and Latin America and the Caribbean (41%) come next. Our analysis also reveals that the kinds of disciplines included sometimes depend on the RTA partner's region, as is discussed in more detail in Section 3.

<sup>17</sup> Following the classification of regional groups by the World Bank, the mode 4 RTAs in our analysis involve 22 economies in East Asia & Pacific; 33 economies in Europe & Central Asia; 12 economies in Latin America & Caribbean; two economies in North America; and one economy each in Middle East & North Africa, South Asia, and 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>.



**Figure 2.3A**  
**Members with mode 4 disciplines in RTAs, by geographic region**



### 3 TYPOLOGY OF REGULATORY DISCIPLINES

As discussed in Section 2.1, mode 4 regulatory disciplines in RTAs are of two main kinds: those related to transparency and those concerning application procedures. They are analysed in more detail in the sub-sections below.

#### 3.1 Transparency

Virtually all RTAs that include disciplines on the temporary entry and stay of natural persons<sup>18</sup> and more than 90% of Members that have concluded these RTAs<sup>19</sup> include GATS-plus disciplines on transparency. These disciplines fall within one or more of the types described in Box 3.1.

**Box 3.1**  
**Types of transparency disciplines**

Discipline	Description
<b>Publish information</b>	Provide, publish online, or otherwise make publicly available explanatory material or information on requirements or/and procedures for the temporary entry of natural persons. In some instances, this is complemented by an indication of the specific information to be published (e.g., fees, review and appeal procedures, timeframes).
<b>Publish modifications</b>	Upon modification or amendment of requirements and procedures for temporary entry of natural persons, ensure that the updated information is published or that the other Party is informed.
<b>Maintain and share data</b>	Collect, maintain and (upon request) make available to the other Party, often in accordance with domestic law, information relating to the granting of temporary entry authorization to persons of the other Party to whom immigration documentation have been issued.
<b>Establish mechanism to respond to enquiries</b>	Establish/maintain appropriate mechanisms to respond to enquiries from interested persons regarding measures affecting temporary entry.
<b>Allow reasonable time between publication and entry into force of measures</b>	To the extent possible, allow reasonable time between publication of final regulations affecting temporary entry of natural persons and their date of entry into force.

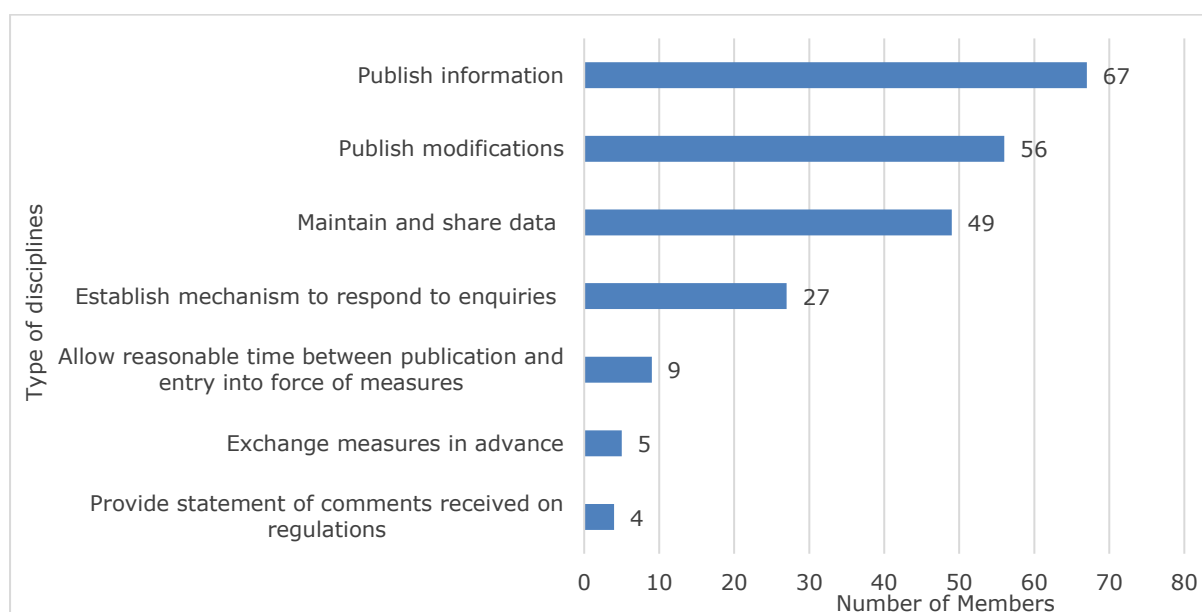
<sup>18</sup> The only exceptions are PACER Plus (2020), Nicaragua–Chinese Taipei (2008), and Thailand–Australia (2005).

<sup>19</sup> Four Members (Samoa, Solomon Island, Tonga, and Vanuatu) are Parties only to the PACER Plus Agreement. As this Agreement does not contain transparency provisions, the share of Members having included transparency provisions is smaller than the share calculated in terms of Agreements.

Discipline	Description
<b>Exchange measures in advance</b>	Prior to the entry into force of the RTA, exchange information on current procedures relating to the processing of applications for temporary entry of natural persons.
<b>Provide statement of comments received on regulations</b>	If comments are received regarding a proposed regulation on temporary entry of natural persons, publish a concise statement addressing those comments at the time the final regulation is adopted.

Figure 3.1A presents the number of Members that have included mode 4 transparency disciplines in their RTAs.

**Figure 3.1A**  
**Members with mode 4 transparency disciplines in RTAs, by type**



As illustrated in the Figure, the mode 4 transparency discipline most frequently incorporated in RTAs involves the obligation to publish information. Almost all (99%) Members with transparency obligations<sup>20</sup> include this kind of discipline. The degree of stringency varies somewhat, however, with the firmer disciplines, which have been adopted by the vast majority of the Members concerned, setting either a specific timeframe for publication<sup>21</sup> or providing very limited scope for discretion in terms of when publication is to occur.<sup>22</sup>

In this regard, it is notable in that, in Article III:1, the GATS already contains an obligation for Members to publish all relevant measures of general application that affect the operation of the Agreement. Nevertheless, RTAs may be argued to offer "GATS-plus" obligations by prescribing that publication concern specifically "explanatory material or information on requirements or/and procedures" related to the "temporary entry of natural persons".

Furthermore, while most RTAs contain a general requirement to publish this information, some additionally include an indicative list specifying the type of information that is to be published.<sup>23</sup>

<sup>20</sup> Unless otherwise indicated, percentages in this Section are calculated out of the total number of Members with mode 4 transparency disciplines in RTAs, i.e., 68, also referred to as "the Members concerned".

<sup>21</sup> Most Members set the timeframe at 45 days, 3 months, 6 months, or 12 months. See for instance, China-Costa Rica (2011), Chapter 9, Section C, Article 104.1(a).

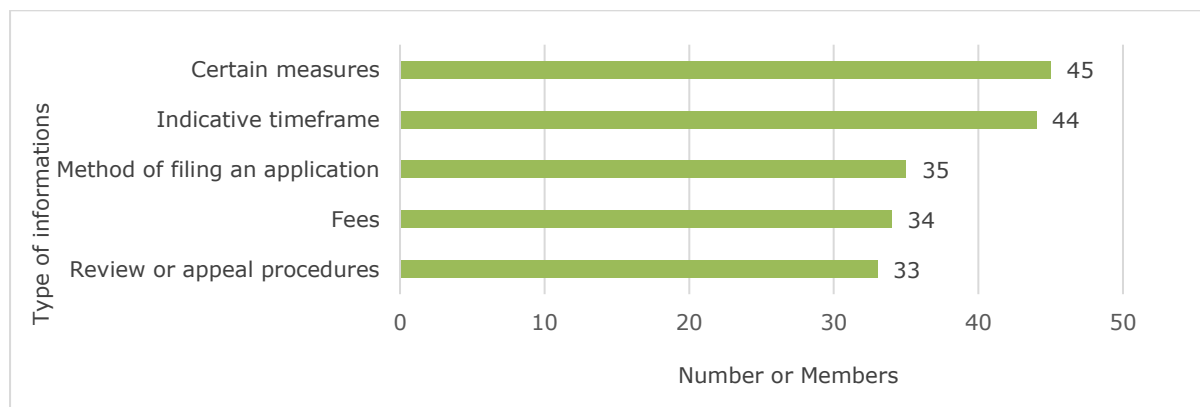
<sup>22</sup> For example, with the stipulation "upon the date of entry into force of this Agreement" as found in Japan-Mongolia (2016), Chapter 8, Article 8.5.1.

<sup>23</sup> Out of the 90 RTAs (signed by 67 Members) that indicate a requirement to publish information, 27 (signed by 51 Members) include an indicative list of the specific information to be published. Seven of these 27 RTAs list a significant number of information elements, namely: UK-Iceland, Liechtenstein, and Norway (2021); European Union-United Kingdom (2021); United Kingdom-Japan (2021); Peru-Australia (2020); European Union-Japan (2019); Türkiye-Serbia (2019); and Türkiye-Singapore (2017).

Although the first RTA with a requirement to publish information on a specific mode 4 measure was concluded relatively early on, in 2006, between Japan and Malaysia, the inclusion of a more detailed indicative list is a fairly new practice.<sup>24</sup>

Figure 3.1.1A details the number of Members that have included the requirement to publish various specific types of information in their RTAs.

**Figure 3.1.1A**  
**Members with mode 4 transparency disciplines requiring the publication of specific information, by type of information**



Out of the 51 Members that have undertaken such an obligation, as the Figure illustrates, the specific information to be published concerns certain measures (e.g., extensions and renewals, requirements for accompanying spouses) in 88% of cases, indicative timeframes to process applications (in 86% instances), method of filing an application (69%), fees (67%) and review or appeal procedures (65%).<sup>25</sup>

The second most agreed upon transparency discipline is the obligation to publish modifications to existing requirements and procedures, and in some instances to inform the other RTA Party(ies), which has been adopted by 82% of the Members concerned. Bearing in mind that the various options are not mutually exclusive, and, in some instances, have been used in combination, 41 Members have agreed to publish such information "immediately" or "promptly", 12 have committed to doing so within a 3 months' timeframe<sup>26</sup>, two have indicated a 30-day timeframe<sup>27</sup>, whereas another seven, keeping more flexibility, have not indicated any timeframe for publication.

Again, these disciplines build upon a pre-existing GATS obligation, in Article III:3, which stipulates that "promptly and at least annually" Members notify "the introduction of any new, or changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services" covered by their specific commitments. However, for the purpose of our analysis we consider that corresponding RTA disciplines go further, by including an explicit reference to mode-4 related requirements and procedures, and by not circumscribing the obligation only to those sectors included in Members' services schedules.

Provisions to establish an "appropriate mechanism" to respond to enquiries from interested persons have been included in the RTAs in our sample by 40% of the Members concerned. Once more, the GATS does contain a similar provision, in Article IV:2, that requires developed Members to establish contact points to facilitate the access of developing country Members' services suppliers to specific information. However, we consider the equivalent RTA provisions to be GATS-plus as they are explicitly focused on mode 4-related requirements, expressly require that a response be provided to

<sup>24</sup> EU-Japan (2019) was the first Agreement to include an indicative list of more than three specific types of information.

<sup>25</sup> When assessed in terms of the Agreements, rather than Members, the corresponding figures are 67% referring to certain measures, 56% to indicative timeframes, 37% to method of filing an application, 22% to fees, and 19% to review or appeal procedures.

<sup>26</sup> These 12 Members are Parties to two Agreements, i.e., Malaysia-Australia (2013), Chapter 10, Article 10.9.4; and ASEAN-Australia-New Zealand (2010), Chapter 9, Article 8(c).

<sup>27</sup> New Zealand and Malaysia, in the Agreement they have signed with each other (New Zealand-Malaysia (2010), Chapter 9, Article 9.7(c)).

interested persons and extend the obligation to set up "mechanisms" to all RTA Parties, to the benefit of all service suppliers regardless of level of development.<sup>28</sup>

As discussed, three of the four most common mode 4 transparency provisions in RTAs build upon GATS obligations. However, RTA Parties have also agreed to totally novel disciplines, that find no equivalent in the GATS.<sup>29</sup>

This is the case notably for disciplines mandating the maintenance, and sharing with the other Party(ies), of data about natural persons who have been granted temporary entry, which have been adopted by a remarkable 72% of Members concerned, in 47 RTAs.

Other "novel" transparency disciplines are also found in RTAs, although they have been undertaken by a more limited number of Members. These are disciplines to allow a reasonable time between the publication of new measures and their entry into force (adopted by 13% of Members concerned); providing for information on pertinent measures to be exchanged before the RTA enters into force (7%); and directing the publication of a concise statement addressing any comments received regarding a proposed regulation (6%). The lower incidence of these provisions is not really surprising, given the increased scrutiny of domestic regulatory processes they imply and the fairly burdensome implementation they require for the authorities concerned if they are not pre-existing regulatory mechanisms. Still, this is also part of what may render them especially valuable from a trade facilitation perspective.

Looking at how different combinations of transparency provisions have been used in RTAs, our analysis reveals that the obligations to publish information and to maintain and share data are those most frequently used together. This combination of obligations was first found in the RTA concluded between two high-income economies, Canada and Chile.<sup>30</sup> Subsequently, a further 43 RTAs, involving 47 other Members from all income levels, have included these same two transparency provisions.<sup>31</sup>

When it comes to RTAs that include a wider set of transparency obligations, comprising at least four different disciplines, the first such occurrence was an Agreement concluded again between two high-income economies, i.e., the United States and Singapore, in 2004. A further five RTAs have adopted a similarly expansive set of disciplines, one concluded between high income economies, one between upper- and lower-middle income economies, and the other three agreed by Parties from high- and lower-middle income economies.<sup>32</sup>

In our sample, 53 RTAs include at least one of the "novel" transparency disciplines.<sup>33</sup> These Agreements have been signed between economies at all income levels. More specifically, 16 are between high- and upper-middle income groups, 10 are Agreements exclusively between high-income economies, 9 among upper-middle income economies only, another 9 between upper- and lower-middle income economies<sup>34</sup> and 8 between high- and lower-middle income Members. The remaining one Agreement was concluded amongst Members of all income levels.<sup>35</sup>

Obligations that build upon the transparency disciplines found in the GATS<sup>36</sup> are included most often in Agreements between high and upper-middle income economies (16), among high income countries (15), and between high and lower-middle income countries (7). Agreements among

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<sup>28</sup> Some RTAs only mandate the establishment of mechanisms to respond to enquiries from the Parties, rather than from service suppliers. This is an obligation that, although not specifically aimed at mode 4 measures, WTO Members are already required to respect in view of the mandate to establish "enquiry points", in GATS Article III:3.

<sup>29</sup> It needs to be acknowledged that many of the Members that acceded to the WTO after its creation have unilaterally agreed to GATS-plus regulatory disciplines, both on transparency and application procedures, although none of these provisions are specific to mode 4.

<sup>30</sup> Canada-Chile (1997), Chapter K, Article K-04.

<sup>31</sup> 18 of the 43 RTAs comprise additional transparency disciplines beyond these two.

<sup>32</sup> India is Party to four of these Agreements and is the only Member from the lower-middle income group to include a set of at least four transparency disciplines.

<sup>33</sup> As discussed, "novel" obligations are those to maintain and share data on the natural persons who have been granted temporary entry, allow reasonable time between publication and entry into force of measures, exchange measures in advance and provide statement of comments received on regulations.

<sup>34</sup> In our sample there are a total of 9 RTAs concluded between upper- and lower-middle income economies, implying that all include at least one of these "novel" obligations.

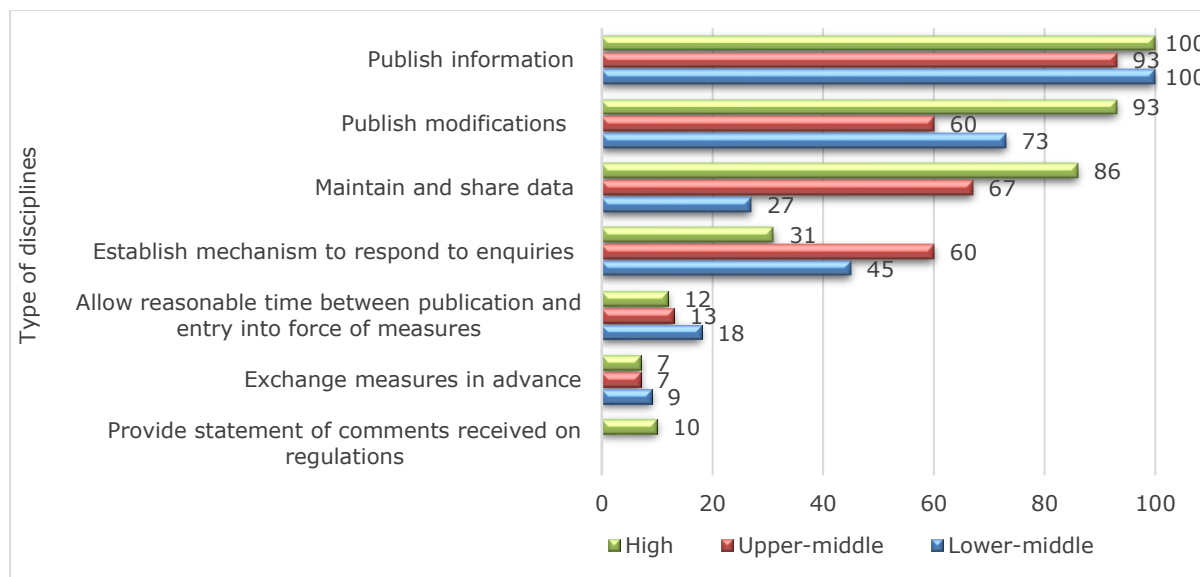
<sup>35</sup> Korea, Republic of-Central America (2019).

<sup>36</sup> These are the obligations that mandate the publication of information, the publication of modifications or the establishment of mechanisms to respond to enquiries.

economies from all income levels (3) and between upper-middle income economies (3), instead, include such obligations more rarely.

Figure 3.1B analyses the individual transparency disciplines adopted by Members depending on their level of income.

**Figure 3.1B**  
**Members with mode 4 transparency disciplines in RTAs, % by income level**



As the Figure illustrates, the most frequently included discipline, to publish information, was adopted by economies across all income levels, with high and lower-middle income Members fully represented. In terms of what specifically needs to be published, information on fees<sup>37</sup> and on appeals and review procedures<sup>38</sup> are elements not found in any of the RTAs to which lower-middle income Members are Parties.

High-income Members have included disciplines mandating the publication of modifications to relevant measures and requiring the maintaining and sharing of data comparatively more frequently than economies in other income groups. Moreover, only high-income Members have included provisions mandating the Parties to publish a concise statement addressing the comments received from interested persons on proposed regulations.

Conversely, it is lower-middle and especially upper-middle income Members have been relatively more frequent adopters of disciplines directing the establishment of mechanisms to respond to enquiries from interested persons. The underrepresentation of high-income Members might be due to the fact that, under the GATS, developed country Members already have an obligation to set up somewhat similar mechanisms, although these are not specifically related to mode 4 enquiries, only facilitate access to information and are exclusively to the benefit of suppliers from developing Members.

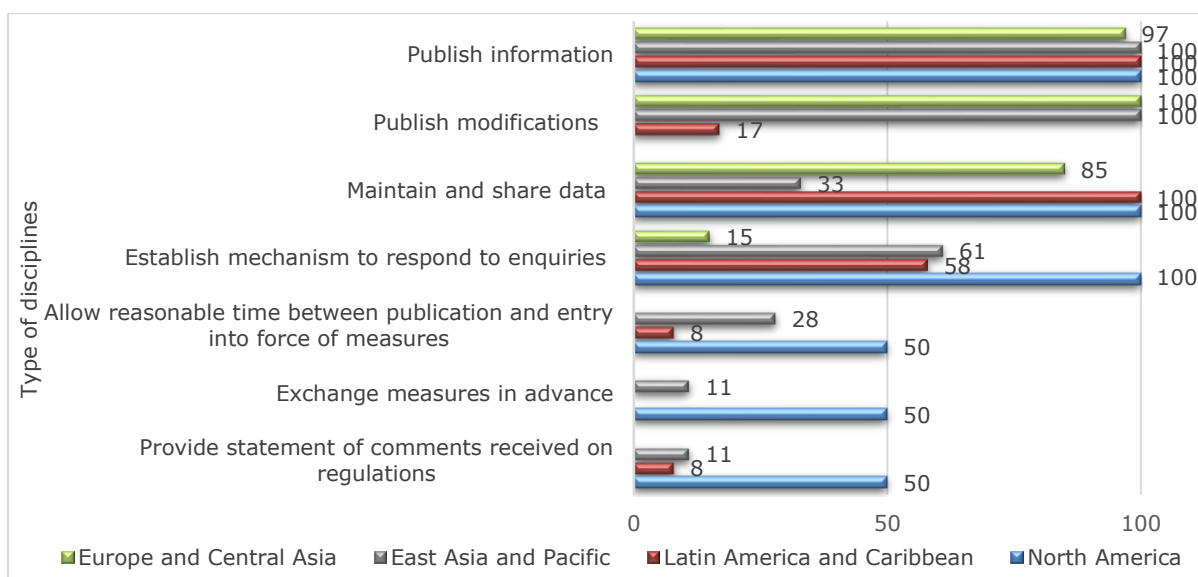
Finally, disciplines requiring a reasonable time between publication of measures and their entry into force and those providing for measures to be exchanged in advance are relatively more prevalent in RTAs signed by lower-middle income Members.

Figure 3.1C presents information about the geographical distribution of mode 4 transparency disciplines.

<sup>37</sup> Six RTAs specify a requirement to publish information on fees, namely: UK-Iceland, Liechtenstein, and Norway (2021); EU-UK (2021); UK-Japan (2021); Türkiye-Serbia (2019); EU-Japan (2019); and Türkiye-Singapore (2017).

<sup>38</sup> Five RTAs specify a requirement to publish information on review and appeal procedures, namely: UK-Iceland, Liechtenstein, and Norway (2021); EU-UK (2021); UK-Japan (2021); Türkiye-Serbia (2019); and EU-Japan (2019).

**Figure 3.1C**  
**Members with mode 4 transparency disciplines in RTAs, % by geographic region**



As previously mentioned, given that the South Asia, Sub-Saharan Africa, and Middle East and North Africa groupings each comprise only one Member with mode 4 RTA disciplines, the information cannot be taken as representative of broader regional trends and has been omitted from Figure 3.1C. Nevertheless, it is noteworthy that the only Member from Sub-Saharan Africa and the sole one from South Asia have included, in the Agreement they have concluded with each other,<sup>39</sup> one of the stricter transparency disciplines, namely that providing for reasonable time between the publication of new measures and their entry into force.

For the remaining geographic areas, our analysis shows that the two most common transparency provisions have been incorporated in the RTAs of most regions, with the exception of the North America, and Latin America & the Caribbean groupings, which have adopted the obligation to publish modifications appreciably more rarely. Looking in more detail at what specifically needs to be published under the discipline on publication of information, our analysis reveals that Members in the Europe and Central Asia region have included a reference to timeframes, specific measures, fees, and review and appeal procedures significantly more frequently than other regions, whereas the American continent is virtually absent for the three latter types of information and the East Asia and Pacific region also significantly underrepresented in the latter two types.

Turning to disciplines on maintaining and sharing data, these are markedly less common in the East Asia and Pacific region. The obligation to establish a mechanism to respond to enquiries, instead, is noticeably more absent from RTAs concluded by economies in the Europe and Central Asia region, while omnipresent in the Agreements signed by North American Members.

Finally, disciplines requiring that there be a reasonable time between the publication and entry into force of new measures, that measures be exchanged prior to the RTA's taking effect, and that a statement be published addressing any comments received are virtually absent from RTAs across all regions, except for North America.

At a more granular level, trends can also be observed with regard to specific Members. For instance, out of the 21 services RTAs signed by the EU, only three adopt mode 4 provisions, all of which include transparency disciplines. The first such Agreement is the one concluded with Canada,<sup>40</sup> which contains obligations to publish information and share data on the natural persons who have been granted temporary entry and stay. In two subsequent RTAs, with other high-income Members (i.e., Japan<sup>41</sup> and the United Kingdom<sup>42</sup>), the EU deepened the transparency disciplines it adopted. For example, the EU-Japan Agreement further elaborates on the information to be published in an

<sup>39</sup> India-Mauritius (2021), Annex 10.

<sup>40</sup> European Union-Canada (2017), Chapter 10, Article 10.4.

<sup>41</sup> European Union-Japan (2019).

<sup>42</sup> European Union-United Kingdom (2021).

indicative list<sup>43</sup> and mandates the Parties to inform each other "promptly" if new requirements and procedures are introduced, or the requirements are amended.

Similarly, an illustrative list of the information to be published is included in almost all the RTAs signed by the United Kingdom, and specifically those with the EU, Japan and Iceland, Liechtenstein, and Norway. The RTA the UK has concluded with Canada, instead, does not include such a list, but does adopt other transparency provisions.

The United States, which has signed 11 RTAs covering services trade, has included mode 4 disciplines in only three, namely those concluded with, respectively, Chile, Singapore and Mexico-Canada.<sup>44</sup> The Agreements with Chile and Singapore include some of the "novel" transparency disciplines, such as the obligation to provide the interested persons with a concise statement addressing any comments received on proposed regulations.<sup>45</sup> In addition, the two RTAs require the Parties to publish and make available information in a consolidated document; establish a mechanism to respond to enquiries from service suppliers; allow reasonable time between the date of publication of regulations and their date of entry into force; and share, upon request, data on the natural persons who have been granted temporary entry. The Agreement between the United States, Mexico and Canada adopted only one "novel" discipline, that to share data on the natural persons who have been granted temporary entry.<sup>46</sup>

Our analysis also reveals situations where given disciplines are always, or nearly always, included in the RTAs signed by a particular Member. For instance, in all its six Agreements with mode 4 disciplines, Hong Kong, China has incorporated the obligation to publish information.<sup>47</sup> It is noteworthy that in four of Hong Kong, China's RTAs, the other Party has undertaken no transparency obligation, yet Hong Kong, China has done so unilaterally, through scheduling.<sup>48</sup> In addition, in these four RTAs Hong Kong, China has additionally agreed to publish information online, on the "website of the visa/permit issuing authority".<sup>49</sup>

The five RTAs containing regulatory disciplines on mode 4 that India has signed,<sup>50</sup> all comprise an obligation on the Parties to allow reasonable time between publication and entry into force of mode 4 related measures.

Looking at Latin America, Peru has concluded 12 Agreements covering mode 4 disciplines, and all 12 mandate the publication of information and the establishment of a mechanism to respond to enquiries. In addition, nine of these 12 Agreements place an obligation on the Parties to maintain and share data on the natural persons who have been granted temporary entry.<sup>51</sup> Similarly, Mexico has concluded eight Agreements with mode 4 disciplines, and all except one incorporate the obligation to maintain and share relevant data.<sup>52</sup> Chile has concluded 16 Agreements that include mode 4 disciplines, 14 of which comprise a requirement to publish information, and to maintain and

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<sup>43</sup> See European Union-Japan (2019), Chapter 8, Article 8.23, which states that "the information shall include, where applicable, categories of visa, permits or any similar type of authorization; documentation required and conditions to be met; methods and place of filing an application; application fees and indicative timeframe of processing of an application; the maximum length of stay for each type of authorization; conditions for available extensions or renewal; rules regarding accompanying depends; review or appeal procedures; and relevant laws of general application concerning entry and temporary stay of natural persons."

<sup>44</sup> All subsequent RTAs concluded by the United States do not include any mode 4 regulatory disciplines. For further discussion on this issue, see, for instance, Carzaniga, A. (2009), "A warmer welcome? Access for natural persons under PTAs", in 'Opening Markets for International Trade in Services', Marchetti, J.A. and M. Roy (eds).

<sup>45</sup> See United States-Singapore (2004), Chapter 11, Article 11.5.2; and United States-Chile (2004), Chapter 14, Article 14.8.2. It should be noted that this is an absolute requirement in the US-Singapore Agreement, whereas in the US-Chile Agreement, the Parties are required to do so to the extent possible and upon request.

<sup>46</sup> United States-Mexico-Canada Agreement (2020), Chapter 16, Article 16.5.2.

<sup>47</sup> Five of those six Agreements further specify the information to be published, including indicative timeframes to process applications.

<sup>48</sup> The four Agreements in question have been concluded with: ASEAN; Georgia; Macao, China; and Chile. Hong Kong, China's transparency disciplines have been included in its schedule of commitments, rather than in the framework provisions of the RTA.

<sup>49</sup> These are the only four RTAs in our sample of 100 which include the requirement to publish information on an official website.

<sup>50</sup> India has signed a total of six services RTAs, and only the ASEAN-India Agreement (2015) does not include regulatory disciplines on mode 4, even if it comprises a specific Annex on the "Movement of Natural Persons".

<sup>51</sup> This is absent in CPTPP (2018), Peru-Singapore (2009), and Peru-Australia (2020).

<sup>52</sup> The one exception is CPTPP (2018).

share data on natural persons who have been granted temporary entry.<sup>53</sup> In addition, two of its Agreements contain the obligation to provide interested persons with a concise statement addressing any comments received on proposed regulations.<sup>54</sup>

Conversely, our analysis also points to instances where the mode 4 transparency disciplines adopted by certain Members in their RTAs are very diverse. For instance, China has concluded 10 RTAs with mode 4 disciplines that exhibit quite different transparency obligations: the Agreements signed with Latin American Members include the obligations to publish information, maintain and share data and establish a mechanism to respond to enquiries,<sup>55</sup> the RTAs with, respectively, Georgia, Mauritius and Singapore include only an obligation to publish modifications, whereas the three Agreements with Australia, Iceland, and the Republic of Korea mandate the Parties to publish information, publish modifications, and establish a mechanism to respond to enquiries from mode 4 service suppliers. The remaining two Agreements, concluded with New Zealand and Switzerland, respectively, include disciplines to publish information and modifications.

In sum, out of the 100 RTAs that include mode 4 regulatory disciplines, 97 adopt transparency disciplines. Of these 97, the majority are concluded between high and upper-middle income economies or exclusively between high income Members. The two most frequently included type of transparency disciplines mandates the Parties to publish information and to publish modifications to relevant requirements and procedures, which may offer only rather limited value added compared to the GATS. Our analysis also reveals, however, that "novel" transparency disciplines are also present in RTAs, mostly found in those concluded between high and lower-middle income Members. With respect to geographic areas, a fairly varied picture emerges, with different types of disciplines prevalent in different regions.

### **3.2 Application procedures**

Out of the 100 RTAs with mode 4 regulatory disciplines, 86, concluded by 70 Members,<sup>56</sup> have included obligations related to application procedures. These disciplines fall within one or more of the types describe in Box 3.2.

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<sup>53</sup> The two exceptions are the Trans-Pacific Strategic Economic Partnership (2006); and the Agreement concluded with Hong Kong, China. At the time of writing, CPTPP is not yet in force for Chile and therefore it has not been taken into account in the analysis.

<sup>54</sup> Australia-Chile (2009), and United States-Chile (2004). The obligation in the Australia-Chile Agreement concerns both "proposed and existing regulations", whereas in the US-Chile Agreement it only relates to proposed regulations.

<sup>55</sup> These disciplines have been included in most of RTAs signed by Latin American economies, with partners from across different regions.

<sup>56</sup> The number of Members with disciplines on mode 4 application procedures would actually be 71, but PACER Plus, Vanuatu's only Agreement with mode 4 disciplines, is not yet in force for the country. We have therefore excluded Vanuatu from the count.

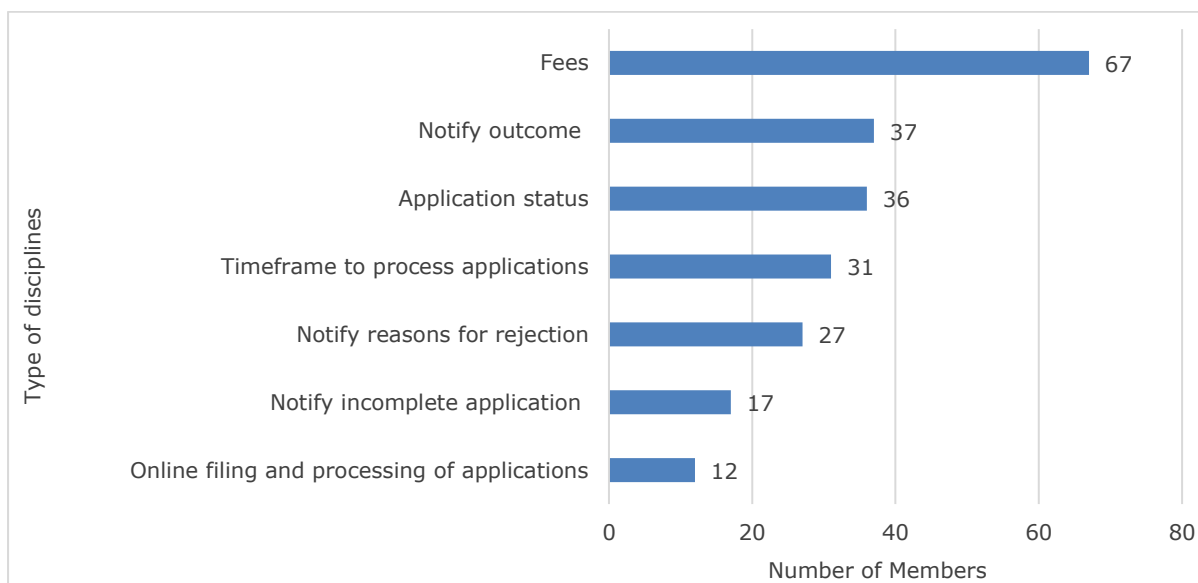


**Box 3.2**  
**Types of disciplines on application procedures**

Discipline	Description
<b>Fees</b>	Set fees so that they are not an unjustified impediment to entry and temporary stay of natural persons/do not unduly impair or delay trade/are approximate to cost of services rendered/are fixed according to the administrative cost involved/are reasonable/are in accordance with domestic laws.
<b>Notify outcome</b>	Decide applications and notify the decision to the applicant promptly/within a reasonable time/without undue delay/ within a fixed timeframe.
<b>Application status</b>	Upon request, provide information to the applicant concerning the status of the application.
<b>Notify reasons for rejection</b>	Where the authorization for temporary entry is refused, inform the applicant (and the Party). Some Agreements require the Parties to provide information on available review or appeal procedures and/or opportunities to resubmit the application.
<b>Timeframe to process applications</b>	Process applications, including requests for extensions of visas and permits (as applicable), expeditiously/as expeditious as possible/promptly/without undue delay.
<b>Notify incomplete application</b>	Where information or documents for the application are incomplete, or if additional documents are required to process the application, notify the applicant. Some Agreements require that time be provided to remedy the incomplete application.
<b>Online filing and processing of applications</b>	Accept and process applications in electronic format/provide facilities for the online lodging and processing of applications.

Figure 3.2A illustrates the number of Members that have included disciplines related to application procedures in their RTAs.

**Figure 3.2A**  
**Members with RTA discipline on mode 4 application procedures, by type**



As the Figure shows, the obligation on fees has been agreed upon by the highest number of Members with RTA disciplines on application procedures (96%).<sup>57</sup> Given the many variations that this provision exhibits in the various RTAs, it is analysed in further detail in Section 3.2.1 below.

The second most frequently incorporated discipline binds the Parties to notify applicants of the outcome of an application process. This obligation exhibits different formulations in terms of the specific timeframe to decide on applications and notify outcomes, ranging from the specification of

<sup>57</sup> Unless otherwise indicated, percentages in this Section are calculated out of the total number of Members with disciplines on application procedures, i.e., 70, also referred to as "the Members concerned".

a fixed, explicit period,<sup>58</sup> to requiring that this be done "promptly", "without undue delay", "as expeditiously as possible" or "within a reasonable period of time", to the absence of any time qualifier. The most frequently encountered discipline, possibly due to the relative flexibility it provides, requires that the decision be taken within a "reasonable period of time"<sup>59</sup>, whereas the least prevalent is the obligation to do so "promptly" or "without undue delay".<sup>60</sup>

It is important to note that GATS Article VI:3 does contain an obligation to inform the applicant of the decision concerning an application within a "reasonable period of time". However, the GATS obligation applies in cases "where authorization is required for the supply of a service on which a specific commitment has been made". For the purpose of our analysis, we consider that, in spite of the similarities, this type of RTA discipline, which is explicitly related to applications for entry and temporary stay and not contingent on the existence of a specific commitment, amounts to a GATS-plus discipline.

Moving to the next most common provision, over half of the Members in our sample have agreed to provide, on request, information about the status of an application. This discipline is included in 41 RTAs, although the exact formulations of this discipline vary across Agreements. Bearing in mind that the different formulations are not mutually exclusive, 30 RTAs require the Parties to provide such information "without undue delay", seven "within a reasonable period of time" and the remaining four to do so "promptly". It bears pointing out that GATS Article VI:3 also provides that, at the request of the applicant, Members "provide, without undue delay, information concerning the status of the application". However, for the same reasons indicated above, we consider this RTA obligation as an improvement over the corresponding GATS discipline.

Next come provisions pledging a specific timeframe to process applications, which have been adopted by about half of the Members concerned. About another half (27) of Members has agreed to the obligation to inform the applicant (and the Parties) of the reasons for rejection.<sup>61</sup> Eleven of these 27 Members additionally agreed to provide information on available review or appeal procedures, or the afford the opportunity to resubmit an application.<sup>62</sup>

Relatively fewer Members, i.e., a quarter of those with "procedural" disciplines, agreed to notify the applicant if an application is incomplete, with some additionally providing an opportunity to remedy the situation. By far the least frequent discipline is the requirement to provide facilities for the online filing and online processing of applications, included by 17% of the Members concerned.<sup>63</sup>

Looking at the RTA disciplines on application procedures depending on the Parties' level of income, our analysis reveals that these have been included across all income levels. Specifically, they have been incorporated in 31 RTAs concluded between high- and upper-middle income economies, 18 signed among high-income economies, 15 agreed between high- and lower-middle income economies, 9 concluded between upper- and lower-middle income economies, and another 10 signed among upper-middle income economies. The remaining three RTAs<sup>64</sup> include economies from all income levels. Out of a total of 86 relevant RTAs, 13 have incorporated only one type of discipline on application procedures, the one related to fees.

Figure 3.2B presents information about the specific procedural disciplines adopted by Members in each income group, as a share of the number of Members from that income level with such

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<sup>58</sup> 17 Members, in 14 RTAs, include this fixed timeframe. Most set the timeframe at 10, 30 or 45 days, but in one Agreement this is set at "15 to 40 days" and in another at 90 days. Two of these 14 RTAs include a fixed timeframe only for deciding applications, which does not necessarily place an obligation on the Parties to notify the outcome within the same timeframe; regardless, for the purpose of our analysis, we have counted these two RTAs as part of this category.

<sup>59</sup> This formulation has been included by 28 Members, in 24 RTAs.

<sup>60</sup> 15 Members, in nine RTAs, have adopted this formulation.

<sup>61</sup> They have done so in 33 RTAs, of which 22 include disciplines to notify both the applicant and the other Party(ies), 11 comprise disciplines to notify the applicant (in four cases to do so upon request, and in three cases to the maximum extent possible).

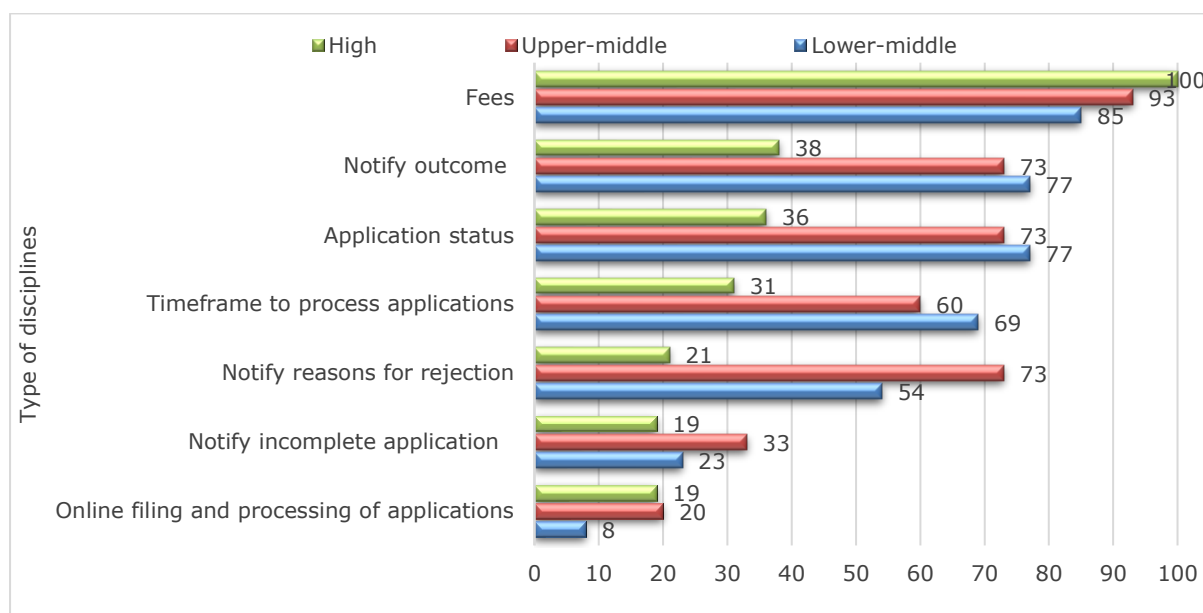
<sup>62</sup> For instance, India-Mauritius (2021) includes a discipline that the applicant be notified, "as far as possible", of the reasons for rejection and be given the possibility to resubmit an application. (Annex 10, Article 11.3)

<sup>63</sup> The first RTA to include such an obligation was the 2003 Agreement concluded between Singapore and Australia (Chapter 11, Article 14). This requirement was subsequently included in another eight Agreements, with different levels of stringency (two adopt a hard "shall provide" obligation, one mandates the Parties to "consider providing" the online processing of applications, three use "where possible" or "shall endeavour to" and another three indicate "shall endeavour to, to the extent possible").

<sup>64</sup> PACER Plus (2020); CPTPP (2018); and ASEAN-Australia-New Zealand (2010).

disciplines.

**Figure 3.2B**  
**Members with RTA disciplines on mode 4 application procedures, % by income level**



The Figure shows that while all high-income Members with "procedural" mode 4 disciplines have included obligations related to fees, these economies are relatively underrepresented with regard to all other types of disciplines, especially for obligations concerning the timeframe to process applications and notification of the reasons for rejection of an application. Our analysis further reveals, however, that when high-income Members have agreed to procedural disciplines, they have included relatively more stringent variants. For example, out of the 17 Members that agreed to discipline to notify the outcome of an application within a fixed timeframe, 11 are high income Members.<sup>65</sup>

Upper-middle income Members have, instead, included relatively more often disciplines prescribing the notification of the reasons for rejecting an application. Similarly, these Members have also comparatively more frequently adopted the obligation to notify incomplete applications, and to provide facilities for the online filing and processing of applications.

Finally, lower-middle income economies have, in relative terms, incorporated most frequently disciplines to notify the outcome of applications,<sup>66</sup> to set a processing timeframe, and to provide information on the status of applications. This income group is, instead, especially underrepresented when it comes to providing for the online filing and processing of applications.<sup>67</sup>

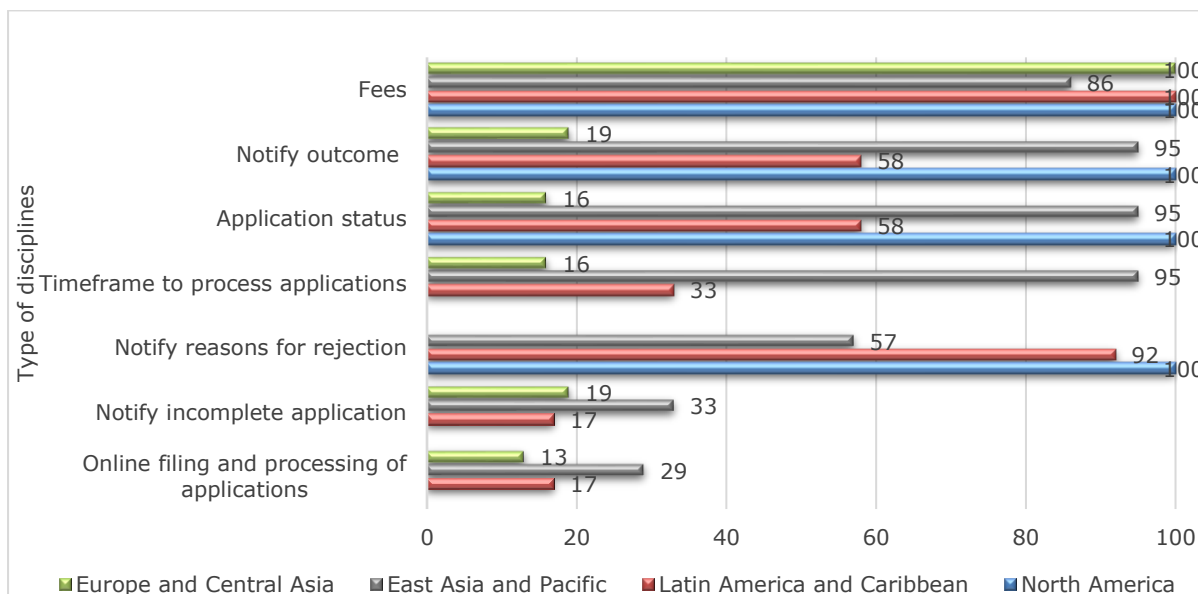
Figure 3.2C illustrates the geographical distribution of disciplines on application procedure.

<sup>65</sup> The remaining six are upper-middle income Members. Lower-middle income economies have no representation for this type of discipline.

<sup>66</sup> However, none of these Members has agreed to notify outcomes within a specified timeframe. Instead, nine refer to "within a reasonable period of time", two indicate "promptly/without undue delay", and one stipulates "as expeditiously as possible".

<sup>67</sup> Furthermore, in the few instances when this provision is included by a lower-middle income Party, it is couched in best endeavour terms (i.e., "to the extent possible"). See, for example, Indonesia-Australia (2020), Chapter 12, Article 12.3.4.

**Figure 3.2C**  
**Members with RTA disciplines on mode 4 application procedures,**  
**% by geographic region**



As discussed earlier, the presence of only one economy with mode 4 RTA disciplines in, respectively, the South Asia, Sub-Saharan Africa, and Middle East and North Africa groupings implies that the information for these Members is not necessarily indicative of broader regional trends and therefore it is not analysed nor included in Figure 3.2C. Still, it should be noted that the one Member from Sub-Saharan Africa and the sole one from South Asia have, in a recent Agreement signed with each other, included a number of procedural disciplines, notably to notify the outcome, notify the reasons for rejection of an application, notify the incompleteness of an application, provide, without undue delay, information on the application status, and provide for an expeditious processing of applications.<sup>68</sup>

For the remaining geographic areas, our analysis shows that provisions on fees have been incorporated in the RTAs of all regions, with a somewhat lower representation for the East Asia and Pacific grouping. This regional grouping is also slightly less present when it comes to notifying the reasons for rejecting an application, but it has otherwise incorporated relatively more frequently the disciplines to process applications within a given timeframe, notify the incompleteness of an application, and provide for online filing and processing.<sup>69</sup> When it comes to the obligation to notify the outcome of an application, Members from the East Asia and Pacific region have tended to include comparatively more flexible obligations.<sup>70</sup>

With the exception of the disciplines on fees, Members from the Europe and Central Asia group are fairly significantly underrepresented across all other procedural disciplines, with no representation when it comes to notifying the reasons for rejection.<sup>71</sup>

Economies from the Americas have also included many of these disciplines relatively infrequently, except for the obligation to notify the reasons for rejecting the application, where both regions are proportionately overrepresented,<sup>72</sup> and the obligations to notify the outcome of an application and provide information on the application status, which are always present for North American Members. It should nevertheless be noted that, despite having adopted the obligation to notify

<sup>68</sup> India-Mauritius (2021), Annex 10, Article 11. Mauritius has concluded two RTAs that include mode 4 disciplines but has incorporated provisions on application procedures only in one.

<sup>69</sup> In eight of the nine Agreements with these disciplines, at least one Party is from the East Asia and Pacific region, and five of these Agreements are exclusively between Members from this region.

<sup>70</sup> Of all the 28 Members from all regional groups that have agreed to notify outcome within the accommodating "reasonable period of time", 19 are from the region. Similarly, of the 15 Members that agreed to notify the outcome "promptly" or "without undue delay", seven are from this region.

<sup>71</sup> This is reflective of the fact that, in its Agreements, the EU has only undertaken procedural obligations concerning "fees".

<sup>72</sup> For instance, 92% of Latin American Members have included this provision in their RTAs.

outcomes comparatively more rarely, Latin American economies are Parties to nearly half of the Agreements that have adopted the firmest variant of this obligation by indicating a fixed timeframe.<sup>73</sup>

Our analysis also reveals some Member-specific trends for mode 4 procedural disciplines. For instance, out of the three RTAs with mode 4 disciplines signed by the EU, only one addresses application procedures, and only includes disciplines on fees.<sup>74</sup> Similarly, the United Kingdom has concluded four RTAs with mode 4 disciplines, but only two include disciplines on application procedures; while one of these Agreements incorporates only disciplines on fees, the other contains a wider set of obligations.<sup>75</sup>

In all of its three Agreements with mode 4 disciplines, the United States has included disciplines on fees and requiring that the applicant be notified in writing of the reasons for rejection (and that the other Party(ies) be also notified, "promptly").<sup>76</sup> When it comes to fees, the recently signed Agreement between the United States, Mexico and Canada adopted one of the firmest obligations, providing that application fees be limited to the "approximate cost of services rendered", whereas other two Agreements take a more flexible approach.

India has included procedural disciplines in all five of its RTAs with mode 4 disciplines, four of which are with economies from the East Asia and Pacific region. All these five Agreements include the discipline to notify the outcome of an application, although none adds any time qualifiers, and two additionally include disciplines on notifying outcomes, providing information on the status of applications, notifying reasons for rejection, processing applications within a certain timeframe, and notifying the incompleteness of an application.<sup>77</sup>

Out of its 10 RTAs with mode 4 disciplines, China has incorporated disciplines on application procedures in eight. All but one include the discipline to notify the outcome of an application, and in three of these Agreements this needs to be done within a fixed timeframe, with the Agreement between China and New Zealand incorporating the absolute shortest time period, of 10 days.<sup>78</sup> Three Agreements include three or more additional disciplines on application procedures.

Australia has concluded 13 RTAs with mode 4 regulatory disciplines, and all address application procedures. Eleven of these RTAs contain four or more different disciplines on application procedures, with five providing for the online filing and processing of applications.

Similarly, Peru's 12 Agreements with mode 4 disciplines all cover application procedures. Each one incorporates certain types of disciplines, namely those on fees and mandating notification of the outcome of applications, with 42% of the RTAs adopting the firmest manifestation of the latter discipline, i.e., within a fixed timeframe. In addition, 11 of the 12 Agreements incorporate the discipline to provide information on the application status, while only one Agreement includes the discipline to provide facilities for online filing and processing of application "where possible".<sup>79</sup>

To recap, out of the 100 RTAs that include mode 4 regulatory disciplines, 86 have incorporated provisions on application procedures. By far the most commonly adopted provision concerns the setting of fees, which, along with the obligations to process applications within a given timeframe, notify when applications are incomplete, notify the reasons for rejecting an application and providing for the online filing and processing of applications, are brand new additions to current GATS provisions. Other disciplines, namely the obligation to notify the outcome of an application and to provide information about the status of the application, instead, build on pre-existing GATS

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<sup>73</sup> Out of the 14 RTAs which include this type of discipline, in seven Agreements at least one Party is from Latin America. Of these seven RTAs, three are with Members from the same region, other two are with economies from North America, and the remaining two are with economies from the East Asia and Pacific region.

<sup>74</sup> See EU-Canada (2017), Chapter 10, Article 10.3.3.

<sup>75</sup> See UK-Iceland, Liechtenstein, and Norway (2021), Chapter 3, Section 3.4, Article 3.22.2. The Agreement comprises provisions to notify outcomes within a fixed timeframe, to provide for the online filing and processing of applications, and to notify incomplete applications.

<sup>76</sup> See US-Mexico-Canada (2020), Chapter 16, Article 16.4; US-Singapore (2004), Chapter 11, Article 11.4; and US-Chile (2004), Chapter 14, Article 14.3.

<sup>77</sup> See India-Mauritius (2021), Annex 10, Articles 4.2 and 11; and India-Malaysia (2011), Chapter 9, Article 9.7.

<sup>78</sup> See China-New Zealand (2008), Chapter 10, Article 128.2. The provision further states that, if the decision cannot be made in that period, the Parties shall inform the applicant of when a decision will be made.

<sup>79</sup> See Peru-Singapore (2009), Chapter 12, Article 12.5.1. The provision further specifies the type of permit covered by the discipline (i.e., the employment pass in the case of Singapore; and labour contracts in the case of Peru).

disciplines. Members at all income levels and across all geographic regions have included given disciplines on application procedures in their RTAs, albeit with some notable variations.

### 3.2.1 Application fees

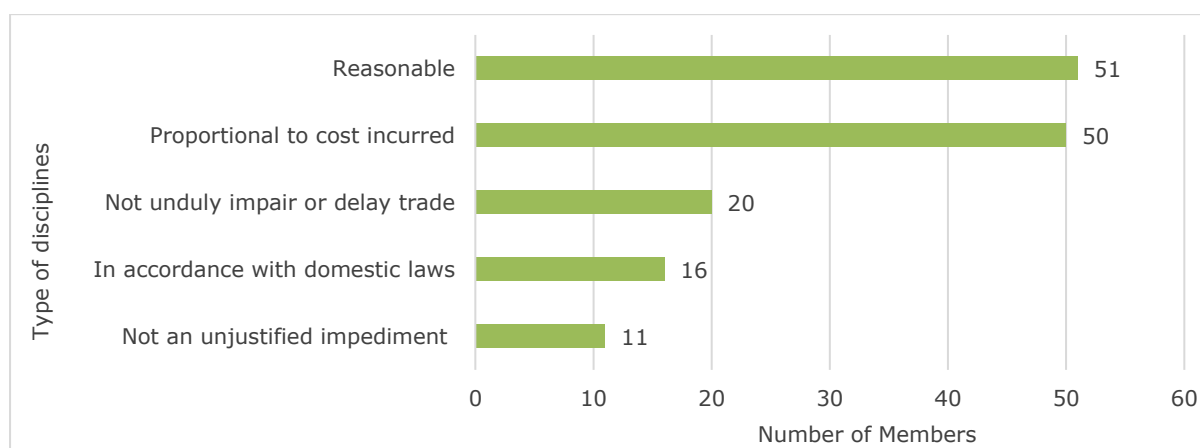
As discussed above, 67 Members have adopted disciplines regarding the setting of fees to process applications for temporary entry and stay of foreign natural persons. Our analysis reveals that five different kinds of disciplines concerning fees are found in RTAs, as outlined in Box 3.2.1.<sup>80</sup>

**Box 3.2.1**  
**Types of disciplines on fees**

Discipline	Description
<b>Reasonable</b>	Fees are reasonable.
<b>Proportional to cost incurred</b>	Fees are limited to the approximate cost of services rendered/determined according to the administrative cost involved.
<b>Not unduly impair or delay trade</b>	Fees do not unduly impair or delay trade.
<b>In accordance with domestic laws</b>	Fees are in accordance with domestic laws and regulations.
<b>Not an unjustifiable impediment</b>	Fees do not in themselves represent an unjustifiable impediment to entry and temporary stay of natural persons.

Figure 3.2.1A presents the number of Members that have included the various types of mode 4 disciplines on fees in their RTAs.<sup>81</sup>

**Figure 3.2.1A**  
**Members with mode 4 RTA disciplines on fees, by type**



As illustrated, the most frequently included type of obligation requires that fees be reasonable and has been adopted by nearly three-fourth of the Members concerned. This is hardly surprising, given that it entails a fair scope for discretion. 88% of high-income Members with disciplines on fees, and 73% of lower-middle income economies, have included this variation, whereas upper-middle income Members have done so comparatively less frequently (57%). The first RTA to incorporate this type of discipline was the one concluded by New Zealand and Malaysia in 2010.

The second most often agreed upon discipline is the much more stringent obligation that the Parties set application fees in a manner that is directly proportional to the "cost incurred". Up until 2003, this was the only type of discipline on fees found in RTAs. This obligation has been incorporated by Members from all income groups, with the utmost prevalence amongst high-income Members (86%)

<sup>80</sup> RTAs actually include six different approaches to determine fees. However, for the purpose of our analysis, we consider two of these, i.e., "approximate cost of services rendered" and "according to the administrative cost involved" as falling under the same approach. It should be noted that if an Agreement comprises two or more different approaches, each is counted separately under the respective type.

<sup>81</sup> Percentages in this Section are calculated out of the total number of Members with disciplines on fees, i.e., 67, also referred to as "the Members concerned".

and upper-middle income economies (79%), and a much lower representation for lower-middle income Members (27%).

The fairly flexible obligation to set fees so that they not to "unduly impair or delay trade" has been included by around one-third of Members with disciplines on fees. The United States-Singapore RTA of 2004 was the first Agreement to include this kind of obligation;<sup>82</sup> it was subsequently incorporated in 16 other RTAs. These Agreements have been concluded by Members from all income levels, although upper-middle income economies adopt them relatively more frequently (43%), followed by high-income economies (29%) and finally by lower-middle income countries (18%).

The looser obligation to set fees in accordance with domestic laws and regulations has been adopted by less than a quarter of all relevant Members, mainly by lower-middle income economies (64%). By way of comparison, only 14% of upper-middle and high-income Members have included this obligation.

Finally, the obligation to set fees in a manner that is "not an unjustified impediment to the movement of natural persons" is found least frequently in RTAs and has been included only by 16% of Members who agreed to RTA disciplines on fees. Lower-middle income Members have incorporated this type of obligation relatively more frequently, followed by upper-middle income Members and, lastly, by high-income economies.

When it comes to geographical occurrence, and again bearing in mind the limits of representativeness for certain regions that we discussed previously, all Members from the Americas have incorporated disciplines to set fees proportionally to the costs incurred in at least one of their RTAs.<sup>83</sup> This has also been the case for 91% of Members from Europe and Central Asia, but much less frequently for economies in the East Asia and Pacific region (33%). Our analysis further reveals that the discipline to set fees in accordance with domestic laws has been incorporated exclusively by Members from the East Asia and Pacific region.

In sum, RTA disciplines concerning application fees have been agreed by a significant number of Members, across all regional groups and income levels, with many Members choosing to adhere to the firmest type of the obligation.

#### **4 CONCLUSIONS**

As our paper has illustrated, RTAs have made significant advances compared to the GATS when it comes to regulatory disciplines related to mode 4 trade. Although the GATS does contain a number of obligations that are applicable to pertinent aspects of mode 4, these disciplines are rather limited in range, and in no way specific to trade through this mode of supply.

GATS-plus mode 4 obligations have become an increasingly frequent feature of RTAs, and their inclusion in these Agreements has accelerated and deepened from the mid-2000s. They address essentially issues related to transparency and application procedures. With the exception of low-income economies, WTO Members across all income levels have incorporated these disciplines in their RTAs. They have also been adopted by Members from all geographic regions, albeit with differing intensity.

RTAs disciplines have improved on the GATS in two ways: first, by building upon existing GATS obligations and tailoring them to measures affecting entry and temporary stay, or expanding the scope of their application; and second, by developing brand new regulatory disciplines for mode 4, that find no correspondence in the current WTO framework. However, it is important to recall that not all mode 4 disciplines included in RTAs necessarily add value compared to the provisions contained in the GATS, as is notably the case for those stipulating conditions for access to mode 4-related dispute settlement.

Finally, an assessment of the specific RTA provisions points significant variation in the types of disciplines adopted and their degree of stringency. Still, the breadth of the disciplines adopted, their adoption by Members at different levels of income and from diverse geographic regions, and their progressive and increasing uptake also illustrate the scope for some of the improvements and innovations captured in RTAs to be considered in a wider, possibly multilateral, context.

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<sup>82</sup> United States-Singapore (2004), Chapter 11, Article 11.4.4. The Agreement requires that fee be fixed so as to "avoid unduly impairing or delaying trade in goods or services or conduct of investment activities".

<sup>83</sup> It should be noted that, out of all RTAs that include this firm discipline on fees, half have been concluded exclusively among Latin American Members (22 out of 44 RTAs).

## Annex 1

### RTAs with mode 4 disciplines

	Name of the Agreement	Year of entry into force
1	United Kingdom - Iceland, Liechtenstein, and Norway	2021
2	United Kingdom - Japan	2021
3	China - Mauritius	2021
4	European Union - United Kingdom	2021
5	India - Mauritius	2021
6	United Kingdom - Canada	2021
7	Hong Kong, China - Australia	2020
8	Peru - Australia	2020
9	United States - Mexico - Canada (USMCA)	2020
10	Indonesia - Australia	2020
11	Pacific Agreement on Closer Economic Relations (PACER Plus)	2020
12	EU - Japan	2019
13	Türkiye - Serbia	2019
14	Hong Kong, China - Georgia	2019
15	ASEAN - Hong Kong, China	2019
16	Korea, Republic of - Central America	2019
17	China - Georgia	2018
18	EFTA - Philippines	2018
19	Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)	2018
20	EU - Canada	2017
21	Hong Kong, China - Macao, China	2017
22	Türkiye - Singapore	2017
23	Peru - Honduras	2017
24	Korea, Republic of - Colombia	2016
25	Japan - Mongolia	2016
26	Costa Rica - Colombia	2016
27	Canada - Korea, Republic of	2015
28	Japan - Australia	2015
29	Australia - China	2015
30	Korea, Republic of - New Zealand	2015
31	Korea, Republic of - Viet Nam	2015
32	China - Korea, Republic of	2015
33	Mexico - Panama	2015
34	Iceland - China	2014
35	Switzerland - China	2014
36	Canada - Honduras	2014
37	Hong Kong, China - Chile	2014
38	Korea, Republic of - Australia	2014
39	Malaysia - Australia	2013
40	Canada - Panama	2013
41	New Zealand - Chinese Taipei	2013
42	Costa Rica - Peru	2013
43	Japan - Peru	2012
44	Chile - Nicaragua (Central America)	2012
45	Mexico - Central America	2012
46	Panama - Peru	2012
47	Peru - Mexico	2012
48	Hong Kong, China - New Zealand	2011
49	India - Japan	2011
50	Peru - Korea, Republic of	2011
51	China - Costa Rica	2011
52	Canada - Colombia	2011
53	EFTA - Colombia	2011



	<b>Name of the Agreement</b>	<b>Year of entry into force</b>
54	India - Malaysia	2011
55	Peru - China	2010
56	New Zealand - Malaysia	2010
57	ASEAN - Australia - New Zealand	2010
58	Korea, Republic of - India	2010
59	Chile - Guatemala (Central America)	2010
60	Canada - Peru	2009
61	Peru - Singapore	2009
62	China - Singapore	2009
63	Australia - Chile	2009
64	Japan - Switzerland	2009
65	Japan - Viet Nam	2009
66	Panama - Nicaragua (Central America)	2009
67	Panama - Honduras (Central America)	2009
68	Panama - Guatemala (Central America)	2009
69	Colombia - Northern Triangle (El Salvador, Guatemala, Honduras)	2009
70	Chile - Colombia	2009
71	Peru - Chile	2009
72	Nicaragua - Chinese Taipei	2008
73	El Salvador - Honduras - Chinese Taipei	2008
74	Japan - Indonesia	2008
75	China - New Zealand	2008
76	Japan - Philippines	2008
77	Chile - Honduras (Central America)	2008
78	Panama - Costa Rica (Central America)	2008
79	Chile - Japan	2007
80	Japan - Thailand	2007
81	Guatemala - Chinese Taipei	2006
82	Japan - Malaysia	2006
83	Korea, Republic of - Singapore	2006
84	Panama - Singapore	2006
85	Trans-Pacific Strategic Economic Partnership	2006
86	India - Singapore	2005
87	Japan - Mexico	2005
88	Thailand - Australia	2005
89	United States - Singapore	2004
90	Korea, Republic of - Chile	2004
91	Mexico - Uruguay	2004
92	Panama - Chinese Taipei	2004
93	United States - Chile	2004
94	Panama - El Salvador (Central America)	2003
95	Singapore - Australia	2003
96	Chile - Costa Rica (Central America)	2002
97	Chile - El Salvador (Central America)	2002
98	Dominican Republic - Central America	2001
99	Chile - Mexico	1999
100	Canada - Chile	1997