Focus on Services Domestic Regulation - Regulatory disciplines in economic integration initiatives and economic benefits deriving from their implementation

Simply Services Seminar - Tuesday, 21 September 2021

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WTO Staff Working Paper – Background

**Initial Basis** - Individual requests by WTO Members to the Secretariat

- *Is our domestic regulatory system sufficiently aligned with substance of disciplines under negotiation in the JSI?*

- *What could be the economic benefits from implementation of the disciplines?*

**Main Tools** - World Bank-WTO Services Trade Policy Database; data available from other instruments of good regulatory practice (World Bank, OECD)
WTO Staff Working Paper – Objectives

1. Review to what extent the SDR disciplines have found their way into trade agreements

2. Assess the degree to which Members have already implemented the SDR disciplines in their regulatory frameworks

3. Analyze the potential linkages between the application of the SDR disciplines and economic performance

The Paper can be accessed here
Transparency
Ensuring prompt availability of information to service suppliers and stakeholder involvement
• Availability of information needed to comply with requirements and procedures for authorization
• Enquiry points for services suppliers
• Publication of draft measures and opportunity for comments

Legal certainty and predictability
Establishing regulatory and procedural guarantees to be followed by competent authorities when dealing with applications
• Indicative timeframes for processing applications
• Information on status and decision on applications
• Reasonable time between publication of measures and entry into force
• Granted authorizations to enter into effect without undue delay

Regulatory quality and facilitation
Disseminating good regulatory practices to facilitate services suppliers' ability to trade
• Acceptance of electronic applications and authenticated copies of documents
• Independent and impartial decision making by competent authorities
• Reasonable and transparent authorization fees
ANALYZING THE PREVALENCE OF SERVICES DOMESTIC REGULATION DISCIPLINES IN REGIONAL AND BILATERAL TRADE AGREEMENTS
• 74 RTAs covering services
• 151 WTO Members
• All substantive SDR disciplines as designed by the Joint Initiative, except for
  • Discipline on non-discrimination between men and women
  • Discipline on developing domestic technical standards through open and transparent processes
How widespread has been the inclusion in RTAs of regulatory obligations in line with the SDR disciplines?
Does the practice vary between economies at different levels of income and across regions?

TRANSPARENCY
- Establish mechanisms for responding to enquiries from service suppliers
- Publish in advance measures before adoption

LEGAL CERTAINTY AND PREDICTABILITY
- Allow applicants to correct minor deficiencies in incomplete applications
- Inform applicant of reasons for rejection of application and allow resubmission
- Ensure that granted authorisation enters into effect without undue delay
- Consolidate relevant information for service suppliers in single online portal
- Accept application in electronic format
- Accept authenticated copies of documents

REGULATORY QUALITY AND FACILITATION
- Authorisation fees are reasonable, transparent, and not in themselves restrictive to service supply
- Ensure independence of competent authorities from service suppliers
Is the practice limited to WTO Members that are participating in the Joint Initiative?

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<tr>
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<th>Non-participants</th>
<th>Participants</th>
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<tr>
<td>Establish mechanisms for responding to enquiries from service suppliers</td>
<td>45%</td>
<td>88%</td>
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<tr>
<td>Publish in advance measures before adoption</td>
<td>40%</td>
<td>87%</td>
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<td>Provide opportunity for comments to interested persons</td>
<td>38%</td>
<td>86%</td>
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<tr>
<td>Explain purpose and rationale of proposed measures</td>
<td>36%</td>
<td>85%</td>
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<tr>
<td>Allow applicants to correct minor deficiencies in incomplete applications</td>
<td>42%</td>
<td>87%</td>
</tr>
<tr>
<td>Inform applicant of reasons for rejection of application and allow resubmission</td>
<td>40%</td>
<td>86%</td>
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<tr>
<td>Schedule examinations at frequent intervals</td>
<td>35%</td>
<td>87%</td>
</tr>
<tr>
<td>Accept application in electronic format</td>
<td>43%</td>
<td>87%</td>
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<tr>
<td>Accept authenticated copies of documents</td>
<td>40%</td>
<td>86%</td>
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<tr>
<td>Authorisation fees are reasonable, transparent, and not in themselves restrictive to service supply</td>
<td>42%</td>
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How does the legal nature of regulatory obligations in RTAs compare with the SDR disciplines?

- Hard obligation
- Soft obligation
- No

**TRANSPARENCY**
- Publish information necessary to comply with requirements and procedures, including online
- Establish mechanisms for responding to enquiries from service suppliers
- Allow applicants to correct minor deficiencies in incomplete applications
- Inform applicants of reasons for rejection of application and allow resubmission
- Ensure that granted authorisation enters into effect without undue delay
- Allow reasonable time between publication of measures and entry into force
- Accept application in electronic format
- Accept authenticated copies of documents

**LEGAL CERTAINTY AND PREDICTABILITY**
- Authorisation fees are reasonable, transparent, and not in themselves restrictive to service supply
- Ensure independence of competent authorities from service suppliers
- Base authorisation measures on objective and transparent criteria
- Ensure that procedures are impartial and adequate to demonstrate compliance with requirements
POTENTIAL LINKAGES BETWEEN THE APPLICATION OF SDR DISCIPLINES AND ECONOMIC PERFORMANCE
INTRODUCTION

• Growing importance of Services Domestic Regulation in RTAs
  ➔ Are there potential linkages between the application of SDR disciplines and economic performance?
• Sample on SDR disciplines in 74 RTAs covering 151 WTO Members
• Construct scores on the level of application of SDR disciplines and correlate with indicators of economic performance
• Assumptions:
  • SDR provisions in RTAs have been implemented domestically in good faith (Article 26 of the Vienna Convention on the Law of Treaties)
  • Implementing regulations of RTA obligations are applicable on an MFN basis
THE SDR SCORES

• Simple average across the SDR disciplines, ranging from 0 (discipline absent in RTAs) to 1 (discipline included in RTAs)
• Equal scoring of hard and soft obligations
• Select most ambitious obligation of each discipline for Members that signed more than one RTA
• Four different scores:
  i. overall score;
  ii. disciplines on transparency;
  iii. disciplines on legal certainty and predictability;
  iv. disciplines on regulatory quality and facilitation
THE ANALYSIS

• Correlations between SDR scores and indicators of economic performance (e.g. services sector, services trade, GVC participation)
• Average between 2010 and 2017-19 (depending on data availability) for each economic indicator to smooth annual fluctuations
• Average scores for low, lower-middle, upper-middle and high-income economies for comparison across income groups
• Not possible to draw any causal conclusions from the correlation analysis
SDR DISCIPLINES AND RELATIVE SIZE OF THE SERVICES SECTOR

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

Correlation coefficient (overall score) = .46

Number of economies: 148
Logarithm of trade (all modes of supply), 2010-17

Overall score
Transparency
Legal certainty & predictability
Regulatory quality & facilitation

Note: H, UM, LM and L denote the average for high, upper-middle, lower-middle and low income economies.
Correlation coefficient (overall score) = .55
Number of economies: 150
SDR DISCIPLINES AND GVC PARTICIPATION

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

Correlation coefficient (overall score) = 0.56
Number of economies: 136
CONCLUSION

- Positive correlation between application of SDR disciplines and economic performance
  - Application of SDR disciplines is associated with larger domestic services sectors, more services trade and higher participation in GVCs
- Locking in good regulatory practices could provide new opportunities for service suppliers to participate in global economy
- Initial results using data on SDR disciplines in Members’ applied regimes point to similar relationships
- Assessment of Members’ performance in this analysis can be made available upon request