SERVICES DOMESTIC REGULATION - CURRENT DISCUSSIONS IN THE WTO

Markus Jelitto
Trade in Services and Investment Division
INTERNATIONAL INSTRUMENTS ADDRESSING SERVICES REGULATION

- General Agreement on Trade in Services
  - Services Liberalization (Market Access and National Treatment)
  - Work on regulatory disciplines (licensing, qualification and technical standards)
    - Accountancy Disciplines
    - Ongoing work on generally applicable disciplines

- OECD Product Market Regulation Indicators
- OECD Services Trade Restrictiveness Index
- OECD Recommendation on Regulatory Policy and Governance
- APEC-OECD Integrated Checklist on Regulatory Reform
- WB Regulatory Assessment Toolkit
- WB Global Indicators of Regulatory Governance
- APEC Non-binding Principles of Domestic Regulation of the Services Sector

... Regional Trade Agreements
COMMON ELEMENTS OF REGULATORY WORK ON SERVICES TRADE IN WTO AND REGULATORY INDICATORS

- Publication and Availability of Information
- Enquiry Points
- Stakeholder Engagement
- Submission, Timeframes and Processing of Applications
- Transparent, Objective, Publicly Available Requirements
- Use of Electronic Means
- Independence and Impartiality

ELEMENTS FOUND IN INDICATORS AND NOT REFLECTED IN WTO WORK ON SERVICES DOMESTIC REGULATION

- Regulatory Impact Assessment (ex ante and ex post)
- Coordination among Domestic Regulatory Agencies
- International Cooperation
- Use of International standards
WTO JOINT INITIATIVE ON SERVICES DOMESTIC REGULATION

- Addresses the **authorization process** (licensing, qualification, and technical standards)
- Focus of the disciplines is on **procedures**, and not on **substantive** requirements.
- Substantial built-in flexibility for regulators: around 2/3 of all provisions contain language such as
  
  “to the extent practicable”, or

  “encourage” Members to take action; or

  ask them to “endeavor” to do something,

  or to do something “in a manner consistent with its legal system for adopting measures”, or

  “taking into account competing priorities and resource constraints”
TRANSPARENCY

Prompt publication and availability of information necessary to comply with the requirements and procedures for authorisation

Enquiry Points

Stakeholder Engagement

- the requirements and procedures;
- contact information of relevant competent authorities;
- fees;
- technical standards;
- procedures for appeal or review;
- procedures for monitoring or enforcing compliance;
- opportunities for public involvement; and
- indicative timeframes for processing.

Appropriate mechanisms for responding to enquiries from service suppliers or persons seeking to supply a service regarding these measures

- Publication of proposed laws and regulations
- Opportunity to comment for interested persons and other Member
- Consideration of comments received
- Explain the purpose and rationale of the law or regulation
PREDICTABILITY & FACILITATION

- Rules on processing of Applications
- Authorization measures based on transparent and objective criteria
- Examinations at reasonably frequent intervals
- Authorization fees reasonable, transparent and based on authority
- Reasonable time between publication of laws and compliance
- Acceptance of electronic applications
REGULATORY QUALITY

- Preference for technical standards developed through open and transparent processes
- Impartiality of procedures
- Procedures adequate and do not unjustifiably prevent fulfilment of requirements
- Independence in reaching and administering decisions on authorizations
- Authorization measures not to discriminate between men and women
• May 2019 Paris Joint Ministerial Statement commits signatories to work on outstanding issues with a view to incorporating the results of the work into participants schedules of commitments by MC12
• Work on substantive disciplines is considered stable and contained in a draft Reference Paper
• Indicative Draft Schedules covering 48 WTO Members (early November 2019)
• Ongoing work on sectoral coverage of the disciplines, application to financial services, and non-discrimination between men and women
• If agreed, outcome will contain additional GATS+ commitments for all participants, to be applied on an MFN basis
• Transitional Periods for developing country participants
• Application to Least developed country participants only after graduation (and subject to transitional periods)