MIKTA Workshop on Services Domestic Regulation

Disciplines on DR for Facilitating Trade in Services

14 November 2019
WTO - 10:00–13:30, Room S1

“A Business Perspective”

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Lack of transparency in Regulation = The main trade barrier

The lack of transparency and due diligence in the regulatory environment are systematically raised as major trade barriers when European service business try to open or expand business abroad or to export in third countries.

When a Service Supplier is looking for a new place to trade or to invest, what will he/she do first? ➔ To look for information on the best new market.

• To look at the size of the market, GDP/capita; spending in the specific sector; existing competition; AND
• To run a Risk Country Assessment: To assess advantages and weaknesses of countries for potential trade and investment.
  ➔ To run such an assessment = need to know the state of play of the legislation and regulations that would apply to the company=
    ➔ Taxes, Labour law (incl. Mode 4); Access to land (real estate, etc.); CSR (Corruption, Human & labour rights), effectiveness of the judiciary system, GATS Commitments, BITs, etc.
    ➔ Regulation on the specific sector of the company: Licensing procedure, authorisation procedure, need of recognition of qualification, of equivalence of process; of adequacy in dealing with data protection, etc.
What should be the content of Disciplines on Domestic Regulation? (1)

a) **Provisions on transparency**

- **Transparent regulatory environment**: all regulation (at all administrative level) should be **easily accessible and comprehensible**, and since this exercise is notably destined to foreign businesses, translated at least into English.

- **Publication**: all regulation (at all administrative level) should be made public and incontestable.

- **Enquiries**: all businesses should have access to **contact points**, preferably through one-stop-shop, where they can enquire about the regulatory process for their sector, what is the authorisation procedure, etc.

- **Review and appeal**: Should a business be not qualified to obtain the authorisation to start business in its area of interest, proper mechanism should be available to ask for a review and an appeal.

- **Provide Guidelines for exporters and investors**: (Optional)
b) Authorisation process:

• **Requirements for Applications and Examinations**: The requirement and conditions set up by the regulatory authorities should be clear and updates should be made easily available;

• **Setting of Fees**: The fees to obtain the license or any other relevant authorisation should be public, non-discriminatory, reasonable and be limited to cover the actual administrative costs for the activities of the national competent authority in managing the authorisation system.

• **Informing Applicants of Status of Applications**: All regulatory authorities should have clear process in place for informing the applicant of their status of application, and keeping them informed in good time, following a due diligence process.

• **Processing of Applications**: The processes of application should be as simple as possible to achieve the intended aim, and the least burdensome as possible. Authorities should accept electronic applications and accept duly recognized copies of original documents;

• **Entry into Effect of Authorization**: The applicant should be informed on the exact timing of the entry into effect of the authorisation granted.

• **Assessment and Recognition of Qualifications**: When the assessment of a qualification is required, the recognition procedure should be transparent, contain a well-defined appeal and review process, and a clear and reasonable timeframe should be determined.
c) Independence of the regulatory bodies

- In network or infrastructure sectors such as telecommunications or financial services, the disciplines should require that all regulatory bodies shall be separate from, and not accountable to, any service providers that they regulate. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.

- In other sectors like professional services, where a regulatory body is in charge of authorizing the supply of a service, the disciplines should require that the competent authorities adopt their decisions in an independent and impartial manner.

d) Coordination between various administrative bodies

Too often, when a company believes that it has all requirements fulfilled, it must however wait to start business because additional requirement from another administration is still pending...
Thank you for ATTENTION!

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