Enhancing trade in services
Role of regulatory cooperation

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Government regulations underpin services sector competitiveness

What drives governments’ proclivity for services sector regulations?

• Guarantee essential services,
• Protect consumers,
• Correct market failures,
• Ensure adequate competition and
• Meet social objectives.
Government regulations underpin services sector competitiveness (cont.)

- The governments should also recognize the business costs in complying with regulations.
- Business groups seek a regulatory environment where such costs are kept to a minimum.
- This does not mean deregulation, but rather better regulation.
- The key to service sector regulatory reform is to ensure that policy objectives are achieved with minimum market distortions.
Regulatory reform approach

1) DESK AND FIELD RESEARCH TO IDENTIFY SERVICES TRADE RESTRICTIONS AND STUDY GOVERNANCE FRAMEWORK

- Identifying services trade restrictions through desk research
- Conducting field work to add to the information on trade restrictions not captured during desk research
- Study on the country’s governance framework undertaken to inform the PPD and clarify the “scope” for potential regulatory reform

2) IDENTIFY POLICY OPTIONS

- Identify policy options for discussion from consultations and ITC regulatory policy option table based on the country’s political economy

3) USE THE PPD APPROACH TO CHOOSE POLICY OPTION

- Stakeholders choose preferred policy options to mitigate trade restrictions and promote competitive services sectors
### Step 1: Identify services trade restrictions and study governance framework

<table>
<thead>
<tr>
<th>Measures affecting trade in services</th>
<th>Sectors covered</th>
<th>Origin</th>
<th>Regulatory goals (objective of the regulation)</th>
<th>Impact (e.g. discriminatory vs. non-discriminatory, possible problems mentioned, which modes specifically affected, does it prevent entry of new operators)</th>
<th>Remarks (e.g. possible alternatives considered or proposed by stakeholders, possible reasons behind the approach)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Screening of all foreign investments</td>
<td>Horizontal</td>
<td>Law on Foreign Investments</td>
<td>Authority in charge (ministry, regulatory body, professional association etc.)</td>
<td>Discriminatory, creates unpredictability for market access/entry, criteria not known, affects mode 3 in all sectors.</td>
<td>Industry has proposed abolishing the limit.</td>
</tr>
<tr>
<td>Foreign ownership limited to 49 %</td>
<td>Telecommunications</td>
<td>Law on Telecommunications Markets</td>
<td></td>
<td>Technology transfer</td>
<td></td>
</tr>
</tbody>
</table>

Adapted from: RASTI – World Bank: (*) The project included three additional parameters: (1) sub-sector covered, (2) specific source of origin, and (3) authority in charge/source of legislation.
Sample questions for assessing the governance framework

- Transparency and regulatory procedures
- Licensing procedures
- Non-discrimination
- Accountability
- Enforcement of laws and regulations
### Policy option table: A few illustrations

<table>
<thead>
<tr>
<th>Regulatory measure</th>
<th>Rationale and possible problems</th>
<th>Alternative policy approach</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Measures affecting market entry</strong></td>
<td></td>
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</table>
| Monopolies or exclusive rights                         | Monopolies or exclusive rights may be due to their network characteristics or to ensure universal access/availability of a service (e.g. postal services). | Open the sector up to competition, either by  
  - giving several but for example geographically limited exclusive rights  
  - establishing a licensing/permit regime with clear criteria,  
  - limiting partial exclusive rights and licenses in duration and ensuring non-discriminatory allocation thereof  
If abolition of monopoly/exclusive right is not possible:  
  - limit the monopoly right to the minimum necessary  
  - limit the duration of monopoly right  
  - ensure competition and non-discrimination in allocating the monopoly right (no selective allocation)  
  - make sure competition law prevents abuse of monopolistic position  
  - ensure independence of regulator                                                                                 |
| Economic needs tests, zoning requirements or geographical limitations | These quantitative measures may serve public interests (e.g. avoiding traffic, guaranteeing the liveliness of city centres, environmental protection), but may also have the effect of protecting existing (domestic) suppliers at the cost of new entrants. | Consider more targeted options to address the problem, for example through incentive-based schemes  
If not possible to abolish the limitations, ensure that criteria are non-discriminatory and publicly available, transparency of the process and independence of the body making the decisions. |
Step 2: Identify policy and regulatory options (cont.)

Policy option table: A few illustrations

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<th>Regulatory measure</th>
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<tr>
<td>Measures affecting operations</td>
<td>Avoid such measures, since they may discourage investment, if conditions are too restrictive.</td>
<td></td>
</tr>
<tr>
<td>Performance requirements (e.g. requirement of showing net</td>
<td>If necessary to maintain, ensure that information about criteria and conditions is clear,</td>
<td></td>
</tr>
<tr>
<td>benefit locally, creating employment,)</td>
<td>transparent and accessible, so that prospective investors can take them into account in their</td>
<td></td>
</tr>
<tr>
<td></td>
<td>investment decisions. Avoid discretion in or vague criteria for assessing “net benefit”.</td>
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<td></td>
<td>When it comes to minimum requirement for share of personnel, replace with a system of payroll</td>
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<td></td>
<td>tax credits applicable to all companies. The approach is more transparent and may benefit</td>
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</tr>
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<td></td>
<td>the foreign company at its choosing.</td>
<td></td>
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<tr>
<td>Limitations on pricing</td>
<td>May be required to limit price effects of lack of competition. Minimum prices may be a response</td>
<td></td>
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<td>to concerns over “predatory pricing” or social objectives (e.g. decreasing the consumption of</td>
<td></td>
</tr>
<tr>
<td></td>
<td>a specific product/service).</td>
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<tr>
<td></td>
<td>Ensure horizontal competition law addresses predatory pricing. Use price monitoring and</td>
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<td></td>
<td>disclosure regimes to ensure abuse of dominant position in pricing. Ensure access to</td>
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<tr>
<td></td>
<td>information to facilitate comparison between services.</td>
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Step 2: Identify policy and regulatory options (cont.)

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<td>Language requirements (either for the provision of the service or producing certain material in a local language)</td>
<td>Not justified in all sectors (health vs. engineering). May be justified to ensure consumers informed choices, e.g. in health, financial, legal or any other services sector, where the information asymmetry plays a significant role.</td>
<td>Limit these requirements only to sectors, where strictly necessary due to consumer protection.</td>
</tr>
<tr>
<td>Licensing/certification in professional services</td>
<td>Certification may be required to overcome information asymmetries</td>
<td>Equivalence approach, based on information exchange, reciprocity or mutual recognition agreements, possibly complemented with aptitude tests and/or complementary studies.</td>
</tr>
<tr>
<td>Measures affecting predictability of application</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Opacity of the regulatory framework and regulation-making</td>
<td>Difficult for operators to know, which laws they are affected by, if and when the regulations change. May produce sub-optimal results and unintended consequences due to insufficient coordination/consultation.</td>
<td>Ensure all laws and regulations are publicly available and easily accessible (e.g. electronically). Establish a mechanism for internal coordination between ministries and agencies as well as for public consultation of stakeholders.</td>
</tr>
</tbody>
</table>
Step 3: Chose the most appropriate policy option

OEDC principles for regulatory quality and performance

Good regulation should:

i. serve clearly identified policy goals, and be effective in achieving those goals;

ii. have a sound legal and empirical basis;

iii. produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account;

iv. minimise costs and market distortions;

v. promote innovation through market incentives and goal-based approaches;

vi. be clear, simple, and practical for users;

vii. be consistent with other regulations and policies; and

viii. be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.

‘One size fits all’ approach should be avoided and solutions may need to be adapted on a case-by-case basis, depending on the local socio-political and economic environment.
Regulatory cooperation - A precondition for further liberalization

- In goods, a country could liberalize trade policy and still apply technical regulation at the border.

- The intangibility of services and the simultaneity of production and consumption makes pre-consumption inspection and post-production regulation difficult.

- An inability to ensure compliance with desired regulations ex ante translates into a reluctance to liberalize.

- Conversely, regulatory reassurance is a pre-condition for liberalization.

Source: Aditya Mattoo, World Bank
Balancing market access with regulatory options

• Today WTO Members take two routes to retaining regulatory discretion:
  ‣ Either they make no commitments
  ‣ Or they make commitments in returns for exceptions provisions, e.g. Prudential Carve Out, Annex on Movement of Natural Persons, Exceptions under Article XIV for Privacy, etc.

• Limited security offered by the coexistence of commitments and untested exceptions provisions.

• Can and should the appropriate balance between permissiveness and restraint be set by a WTO Panel?

• Or should the balance be struck by Members through a cooperative process, with more symmetric commitments by importing and exporting countries?

Source: Aditya Mattoo, World Bank
Current disciplines on regulatory protection

• Transparency

• Non-discrimination (NT and MFN)

• Necessity test

• Rules on monopolies and exclusive service suppliers

• Telecom reference paper
Why are these disciplines inadequate?

• Licenses almost always required

• Discretion in licensing dilutes implementation of key disciplines

• Rules are not stringent enough
Regulatory cooperation

• Greater regulatory cooperation / policy coordination between importers and exporters is a sine-qua-non of trade liberalisation.

• Can happen multilaterally, regionally, bilaterally.
Regulatory cooperation in practice

- Cooperation to ensure liberal trade in digital services and free data flows by addressing divergent standards of privacy. E.g. EU-US Safe Harbor Agreement.

- Cooperation between host and source countries on mode 4 (as in bilateral labor agreements). E.g. Spain-Ecuador; Korea-Philippines; commitments by source countries to certify, facilitate repatriation, combat illegal migration.

- Cooperation to address heterogeneity in prudential regulation in finance, “financial nationalism”, etc. E.g. threat to the EU internal financial market and the EU-US markets by the erosion of regulatory cooperation (e.g. Icesave dispute; implications of Dodd-Frank).

- Cooperation on pro-competitive regulation (e.g. in financial, transport and communication services) E.g. EU-US cooperation on price rigging by financial institutions, EU-US action on collusive arrangements in air and maritime transport; but less so far in developing countries.
Stylized facts about regulatory cooperation

i. The scope and form of regulatory cooperation will differ across service sectors

ii. Regulatory cooperation may not be sufficient but it is necessary

iii. Supply chains diminish the importance of regulatory impediments to trade

iv. There is regulatory cooperation (e.g. Basle III) in certain areas but not in other areas (e.g. Competition policy) not always inclusive of developing countries and rarely coherent with trade negotiations

v. Cooperation must also strengthen regulatory capacity in developing countries
Regulatory cooperation creates a risk of exclusion

- Regulatory cooperation will inevitably be among a sub-set of countries – at least initially
- Risk of trade based on mutual trust rather than comparative advantage (Trust is easier to developed amongst OECD countries)
- Both harmonization and mutual recognition can benefit and hurt third countries