

Facilitating Services Trade Through the Adoption of Good Regulatory Practices: The New Reference Paper on Services Domestic Regulation

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The agreement by sixty-nine WTO Members on a set of disciplines on the transparency, predictability, and efficiency of services regulation – otherwise known as the ‘Reference Paper on Services Domestic Regulation’ – marks the first negotiated outcome in the field of services trade since the extended negotiations on basic telecommunications and financial services in 1997. The outcome illustrates, on the one hand, the challenge of arriving at multilaterally agreed results in the WTO even for substantively non-controversial issues. On the other hand, it is testament to the ability of large groups of like-minded WTO Members to cooperate and deliver without political linkages with other negotiating issues. This contribution aims to provide an overview of the evolution of negotiations on domestic regulation at the WTO, and elaborates on how the main features of the new Reference Paper complement and build upon regulatory disciplines contained in the GATS. While not yet legally into force, recent evidence suggests that the new Reference Paper will become a standard building block for future economic cooperation agreements and its implementation is expected to generate broad economic benefits.

Keywords: services domestic regulation, WTO, Joint Initiative, preferential trade agreements, economic benefits, good regulatory practices.

I INTRODUCTION

The agreement by sixty-nine WTO Members on a set of disciplines on the transparency, predictability, and efficiency of services regulations – otherwise known as disciplines on ‘services domestic regulation’ (‘SDR’) – marks the first negotiated outcome in the field of services trade since the extended negotiations on basic telecommunications and financial services in 1997. The outcome illustrates, on the one hand, the challenge of arriving at multilaterally agreed results in the WTO even for substantively non-controversial issues. On the other hand, it is a testament to the ability of large groups of like-minded WTO Members to cooperate and deliver without political linkages with other negotiating issues. While at present the integration of the SDR disciplines into the WTO legal framework has not concluded, recent evidence suggests that these will become a standard building block for future economic cooperation agreements and that its implementation is expected to generate broad economic benefits.

This contribution is structured as follows: section 2 provides background to the evolution of negotiations on

domestic regulation at the WTO, including the conclusion and entry into force of the new Reference Paper on SDR. Section 3 sets out how the main features of the Reference Paper complement and build upon regulatory disciplines already contained in the GATS. Sections 4 and 5 provide an overview of the prevalence of domestic regulation type obligations in recent preferential trade agreements (PTAs), and the potential economic benefits from implementing their substance at the national level; section 6 concludes.

2 NEGOTIATIONS ON SDR AT THE WTO

Domestic regulation in services is certainly not a new topic for trade negotiations. Already in the early 1990s, the drafters of the GATS realized that some regulatory measures – which are not market access or national treatment limitations *per se* – may have a hindering impact on trade in services. Work on domestic regulation at the WTO emanates directly from the GATS. More specifically, from the multilateral mandate contained in Article VI:4 to develop any necessary disciplines to ensure that

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measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards do not constitute unnecessary barriers to trade in services. Early multilateral work focused on a pilot sector and produced the 'Guidelines for Mutual Recognition Agreements in the Accountancy Sector' (S/L/38, May 1997) and the 'Disciplines on Domestic Regulation in the Accountancy Sector' (S/L/64, December 1998). With the subsequent establishment of the Working Party on Domestic Regulation (WPDR) in April 1999 (S/L/70, April 1999), work progressed with the more ambitious objective of designing horizontal domestic regulation disciplines that could be applicable across services sectors.

Multilateral work on domestic regulation disciplines developed in parallel with the GATS Article XIX mandated services market access negotiations. The discussions were then integrated in 2001 into the broader discussions related to the Doha Development Agenda. Market access and domestic regulation negotiations were seen as two complementary elements of the same objective, namely fostering progressive liberalization with a view to ensuring 'effective' market access. Negotiators were clear that domestic regulation disciplines were to apply to sectors in which market access was provided. They had the critical role of guaranteeing that regulatory measures would not stymie the value of negotiated liberalization commitments.

The linkage between the domestic regulation and the market access agenda was logical at a time of broad optimism that services negotiations would succeed within a relatively short period of time. Initial engagement in the domestic regulation negotiations was significant, with negotiating proposals for disciplines tabled by around seventy WTO Members, individually or in groups. That linkage became an obstacle when progress in market access negotiations for merchandise goods and agriculture became elusive and led to the slowdown of work across the entire services negotiating track. Work on domestic regulation effectively moved outside the WTO to settings which pursued preferential services negotiations, such as the Trade in Services Agreement (TiSA).

Following the successful conclusion of the WTO Trade Facilitation Agreement in 2013, traditional champions of domestic regulation saw promise in reviving this negotiating issue as a stand-alone services trade facilitation initiative delinked from market access. Proposals were developed in 2016 and 2017, in the run-up of the eleventh WTO Ministerial Conference in Buenos Aires.

However, a consolidated proposal circulated in September 2017 covering transparency, administration and development of measures, encountered strong opposition from the African and Least Developed Countries (LDC) Groups. The latter raised what they termed 'concerns of a fundamental nature', questioning the need for the proposed disciplines, and the benefits that these might bring to developing economies and LDCs. Some WTO Members maintained that the proposed disciplines on domestic regulation would be incompatible with their development aspirations and would limit their policy space. In light of the strong opposition by a significant portion of the WTO Membership, no outcome on domestic regulation could be reached at the eleventh WTO Ministerial Conference.

As proponents of domestic regulation disciplines recognized that an outcome involving all WTO Members was out of reach, they decided to continue discussions outside established WTO structures. At the margins of the eleventh WTO Ministerial Conference, fifty-nine WTO Members issued a Joint Ministerial Statement in which they affirmed their commitment to advancing negotiations on the basis of existing proposals, with the ultimate aim of delivering a multilateral outcome.¹ Based on progress in the 'Joint Initiative on Services Domestic Regulation', in May 2019, fifty-nine WTO Members issued a second Joint Statement.² The co-sponsors expressed this time the objective to incorporate the outcome of their work in their respective GATS schedules by the twelfth WTO Ministerial Conference.

Over the same period, substantive work on the development of disciplines in the WPDR subsided. A proposal by India for disciplines related to the presence of natural persons, tabled in 2018, was not further pursued.³ Since 2019, upon the request of certain WTO Members, the WPDR met a few times with the sole objective of addressing the relationship of the mandate contained in GATS Article VI:4 with recent developments concerning the Joint Initiative.

After substantive work was finalized in the context of the Joint Initiative, on 2 December 2021, sixty-seven WTO Members adopted a Declaration to announce the *Conclusion of Negotiations on Services Domestic Regulation*.⁴ Importantly, the Declaration notes the conclusion of work on a set of regulatory disciplines, also known as the 'Reference Paper on Services Domestic Regulation' ('Reference Paper').

The new Reference Paper was widely appreciated by the international services business community. For a long time, services suppliers had identified the lack of

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¹ *Joint Ministerial Statement on Services Domestic Regulation* (WT/MIN(17)/61, World Trade Organization 2017).

² *Joint Ministerial Statement on Services Domestic Regulation* (WT/L/1059, World Trade Organization 2019).

³ S/WPDR/W/61 and Rev.1, of 26 Nov. 2018, and 8 Mar. 2019.

⁴ *Declaration on the Conclusion of Negotiations on Services Domestic Regulation* (21-9081 WT/L/1129, World Trade Organization 2021). In Jun. 2022, two additional WTO Members (Georgia and the United Arab Emirates) joined the Declaration, WT/L/1159/Add.1. Moreover, one acceding government, Timor-Leste joined the Joint Initiative with a pledge to implement the disciplines following WTO accession and graduation from LDC status.

accessible information and multiple layers of administrative bureaucracy regarding the processing of applications as the most significant cost factors in their efforts to access markets and conduct operations.⁵ After numerous calls on WTO Members to deliver on domestic regulation, the US Coalition of Services Industries applauded the new outcome, highlighting that ‘by cutting red tape, the agreement will facilitate smoother flows of global services trade and reduce market barriers, especially for smaller players’.⁶ The Asia-Pacific Services Coalition and the European Services Forum also expressed their support, affirming that it will contribute to restore ‘the WTO credibility with the services business community’ and confirms ‘the WTO’s ability to bring commercially meaningful negotiations to a conclusion’.⁷

The Declaration further set out that participants would give legal effect to the Reference Paper through incorporation in their respective GATS schedules. This can be done by any WTO Members by activating the dedicated procedure adopted by the Council for Trade in Services for the certification of new or improved commitments (S/L/84, April 2000). The Declaration provided a one-year timeframe so as to allow the necessary time to complete any domestic procedures required before seeking official entry into force at the WTO.

In line with the Declaration, as of December 2022, 63 of the 69 participants circulated to the WTO Membership their draft schedules for certification of the new improved commitments on SDR.

Following the submission of such draft schedules, the certification procedure provides for a forty-five day timeframe in which other WTO Members may raise objections. If objections are raised, the procedure stipulates that the objecting Member(s) ‘should to the extent possible identify the specific elements of the modifications which gave rise to that objection’ (S/L/84, paragraph 2). Each of the sixty-three certification requests received objections by two WTO Members. At the time of writing, these objections have not been lifted, thus, the SDR disciplines have not yet legally entered into force.

3 FROM THE GATS TO THE REFERENCE PAPER

In the area of services, trade restrictions normally come in the form of behind-the-borders regulations and are taken typically within the jurisdiction of the regulating country. Regulations may be applied in the pursuance of a variety

of policy objectives, such as consumer protection and welfare, market competition, social equity, or financial stability. For example, regulations may require certain minimum qualifications of suppliers to ensure the quality of the services provided to consumers. Similarly, service providers are often required to disclose information about their services, pricing, and terms of service to allow consumers to make informed choices. Other regulations may be designed to prevent discrimination in access to services and to provide support for disadvantaged or underserved communities.

The GATS preamble recognizes the right of WTO Members to regulate the supply of services in order to meet their national policy objectives. At the same time, it contains a number of good governance obligations which are intended to ensure that services regulations introduced or maintained by WTO Members do not constitute unnecessary barriers to trade in services. For example, given the critical role that the transparency and predictability of regulatory frameworks play to enable the operations of service suppliers, Article III:1 of the GATS demands that all relevant measures of general application are promptly published. WTO Members are also required to establish enquiry points to provide specific information to other WTO Members with respect to any laws, regulations or administrative guidelines which significantly affect trade in services (Article III:4). In addition, in accordance with Article IV:2, developed country Members are asked to set up mechanisms to facilitate access of service suppliers from developing, and especially least-developed, country Members to information concerning their markets, notably with regards to the commercial and technical aspects of the supply of services; the registration, recognition and obtaining of professional qualifications; as well as the availability of services technology.

Under the heading ‘Domestic Regulation’, Article VI of the GATS provides for a set of procedural obligations. Paragraph 1 requires WTO Members, in sectors in which they have undertaken specific commitments in their GATS schedules, to ‘administer’ measures of general application (which means how these are put into practical effect or applied, rather than their substantive content) in a reasonable, objective and impartial manner. Paragraph 2 of Article VI sets out a general obligation to institute or maintain tribunals or procedures for the prompt review – and, where justified, appropriate remedies – of administrative decisions. Moreover, pursuant to paragraph 6,

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⁵ See e.g., PECC International Secretariat, *State of the Region 2016–2017* (2016).

⁶ K. C Swanson, *CSI Welcomes Announcement of New Agreement on Services Domestic Regulation at WTO*, Coalition of Services Industries (2021), https://www.wto.org/english/news_e/news21_e/jssdr_02dec21_csi_e.pdf (accessed 14 Nov. 2023).

⁷ *Back from the Brink! The WTO Gets on With Serious Business* (Asia Pacific Services Coalition 2021), https://www.wto.org/english/news_e/news21_e/jssdr_02dec21_apsc_e.pdf (accessed 14 Nov. 2023). *European Services Forum Welcomes the Conclusion of the WTO Services Domestic Regulation Negotiations* (European Services Forum 2021), https://www.wto.org/english/news_e/news21_e/jssdr_02dec21_esf_e.pdf (accessed 14 Nov. 2023).

with respect to commitments undertaken on professional services, WTO Members are required to provide for adequate procedures to verify the competence of foreign professionals.

It is also worth noting that paragraph 3 of Article VI contains three key obligations that apply when ‘authorization’ is necessary for the supply of a service: (1) competent authorities must process applications within a reasonable period of time after the submission of an application that is considered complete; (2) applicants must be informed of the decision concerning the application; and (3) at the request of applicants, competent authorities must provide without undue delay information regarding the status of the application.

The SDR disciplines contained in the new Reference Paper build on and expand on the good governance provision in the GATS. In other words, they are of a ‘GATS-plus’ nature. The focus of the SDR disciplines is on measures relating to licensing and qualification requirements and procedures, as well as technical standards, affecting trade in services. While the Reference Paper does not provide definitions of such terms, the SDR disciplines apply in the context of ‘authorization’.

The Reference Paper hence does not curtail regulators’ right in determining ‘what’ substantive requirements services suppliers need to comply with. Rather, it focuses on ‘how’ those requirements are administered by competent authorities. In this light, ‘authorization’ is defined in the Reference Paper as the ‘permission to supply a service, resulting from a procedure a person must adhere to in order to demonstrate compliance with licensing requirements, qualification requirements or technical standards’.

Importantly, more than two thirds of the SDR disciplines provide for flexibility for their implementation. Such flexible terms seek to preserve space for differences in WTO Members’ approaches to services regulation and take account of different implementation capacities. For instance, under the terms of the Reference Paper, Members are required to carry out some of the obligations only ‘to the extent practicable’ or ‘in a manner consistent with their legal systems for adopting measures’. Other provisions are expressed in the form of ‘endeavours’ or mere ‘encouragement’ to competent authorities to implement the agreed good regulatory practices.

With respect to their implementation, without prescribing a ‘one-size-fits-all’ approach, the SDR disciplines

can be categorized under three key pillars: (1) transparency; (2) legal certainty and predictability; and (3) regulatory quality and facilitation.⁸

On transparency related matters, the SDR disciplines – building on GATS Article III:1 – require competent authorities to make available all information relevant for services suppliers to comply with requirements and procedures for authorization.⁹ This includes, for example, information on fees, contact points, timeframes for obtaining authorization, and technical standards.¹⁰ Moreover, beyond the scope of the obligations set out in GATS Articles III:4 and IV:2, another transparency related discipline contained in the Reference Paper provides for the establishment of appropriate mechanisms for responding to inquiries from interested service suppliers.¹¹ It should also be highlighted that the SDR disciplines aim to facilitate stakeholder engagement in regulatory design processes, notably through the publication of proposed measures before their finalization, as well as the provision of opportunities for comments for interested persons.¹² In addition, the Reference Paper contains a discipline on establishing a reasonable time between the publication of new laws and regulations and the date of expected compliance by service suppliers.¹³

Under the pillar of legal certainty and predictability, the SDR disciplines seek to ensure that competent authorities provide procedural guarantees when dealing with applications for authorization for service suppliers. Besides reproducing the three key obligations related to authorization in GATS Article VI:3, the Reference Paper also includes obligations to (1) establish indicative timeframes for processing of an application; (2) if an application is incomplete, at the request of the applicant, identify the additional information required to complete the application; and provide the applicant with the opportunity to provide the additional information that is needed; (3) if an application is rejected, informing the applicant of the reasons thereof, and, if applicable, the procedures for resubmission of an application; (4) ensuring that an applicant is not prevented from submitting another application solely on the basis of a previously rejected application; and (5) allowing authorization, once granted, to enter into effect without undue delay.¹⁴ Moreover, specifically concerning the assessment of qualifications for professionals, the Reference paper requires that any mandated examinations

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⁸ It should also be noted that, along with the horizontal SDR disciplines (contained in s. II), the Reference Paper also contains alternative disciplines for financial services (s. III). Given the particular and delicate nature of the financial services sector, participants agreed to allow participants to opt for a slightly less ambitious set of disciplines in this area. In accordance with para. 7 of s. I of the Reference Paper, participants can decide to undertake the horizontal SDR disciplines in s. II for all sectors with specific commitments, including financial services. Alternatively, they can decide to apply the alternative disciplines in s. III for their commitments in financial services.

⁹ *Reference Paper on Services Domestic Regulation* (INF/SDR/2, World Trade Organization 2021), para. 13 of s. II and para. 11 of s. III.

¹⁰ *Ibid.*

¹¹ *Ibid.*, para. 20 of s. II and para. 18 of s. III.

¹² *Ibid.*, paras 14–18 of s. II and paras 12–16 of s. III.

¹³ *Ibid.*, para. 19 of s. II and para. 17 of s. III of the Reference Paper.

¹⁴ *Ibid.*, paras 7–8 of s. II and paras 6–7 of s. III.

be held at reasonably frequent intervals, with an encouragement to make use of electronic means for such processes.¹⁵

Finally, the SDR disciplines also seek to improve the regulatory quality of services markets and facilitate trade in services, including by encouraging the acceptance of electronic applications and authenticated copies of documents¹⁶; requiring the independence of competent authorities in reaching and administering decisions, and the impartiality of authorization procedures¹⁷; as well as demanding the transparency and reasonability of fees related to authorization.¹⁸

Interestingly, the Reference Paper also contains a WTO unique gender-related discipline with a view to promoting the participation of women in services trade. With this provision, participants are asked to ensure that the measures they adopt or maintain in relation to authorizations for the supply of services do not discriminate between men and women.¹⁹ A footnote clarifies that 'differential treatment that is reasonable and objective, and aims to achieve a legitimate purpose, and adoption by Members of temporary special measures aimed at accelerating de facto equality between men and women, shall not be considered discrimination for the purposes of this provision'.

Once into force as part of WTO Members' additional commitments, the SDR disciplines will apply horizontally 'where' Members have undertaken specific commitments in their GATS schedules, i.e., in sectors and modes with specific commitments.²⁰ As the SDR disciplines are scheduled as 'additional commitments' under GATS Article XVIII, their scope is limited to measures not subject to scheduling under Articles XVI (Market Access) and XVII (National Treatment). This means that WTO Members will remain free to operate any existing market access and national treatment limitations they have set out in their respective GATS schedules.

With respect to the application of the SDR disciplines, it should also be noted that developing country Members are entitled to delay the implementation of specific provisions in sectors in which they face implementation difficulties for a maximum of seven years.

However, among all the developing country Members that have signed on to the Reference Paper, only six have requested transitional periods for certain provisions and for periods between three and seven years. Moreover, LDCs that decide to participate will only be required to incorporate the SDR disciplines into their GATS schedules upon graduation from LDC status, with the possibility to designate at that point any necessary transitional periods for implementation, like any other developing country Members.

4 SDR IN 'NEW GENERATION' PTAs

The WTO is not the only forum where domestic regulation related discussions take place. As PTAs increasingly address a broad range of regulatory issues, it comes as no surprise that chapters on domestic regulation in services have also become an integral element therein. A recent analysis of domestic regulation related obligations in a representative sample of PTAs covering the drafting practice of 151 economies produced three key findings.²¹

First, the proliferation over the past twenty years of ambitious PTAs containing chapters on services has corresponded to a growing trend towards the adoption of more extended sets of regulatory commitments. Such provisions appear to be largely equivalent to the SDR disciplines contained in the Reference Paper. Typically, agreements signed in the early 1990s only reproduced the obligations on authorization of GATS Article VI:3. Some also contained a commitment to review the results of WTO negotiations under GATS Article VI:4 with a view to bringing any agreed disciplines into effect between signatory parties.²²

Progressively, 'new generation' agreements²³ have moved beyond the sole focus of removing quantitative restrictions and discriminatory barriers. WTO research found that, in 2005, only six WTO Members had concluded a services PTA with GATS-plus SDR obligations.²⁴ This figure rose to ninety-eight WTO Members by 2015 and 112 WTO

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¹⁵ *Ibid.*, para. 10 of s. II.

¹⁶ *Ibid.*, para. 6 of s. II and para. 5 of s. III.

¹⁷ *Ibid.*, paras 12 and 22 of s. II and paras 10 and 19 of s. III.

¹⁸ *Ibid.*, para. 9 of s. II and para. 8 of s. III.

¹⁹ *Ibid.*, para. 22(d) of s. II and para. 19(d) of s. III. Note that the Reference Paper provides the possibility to opt out from the application of this discipline (*see* para. 9 of s. I). However, at the time of writing, no participant had indicated they would opt-out from this discipline.

²⁰ Note that, in accordance with para. 8 (second sentence) of s. I of the Reference Paper, participants are encouraged to expand the coverage of the SDR disciplines to sectors currently not contained in their services schedules. At the time of writing, nine participants listed new additional sectors to which they will apply the SDR disciplines, including environmental services, business services, postal and telecommunication services, construction, distribution and transport services. Only the SDR disciplines will apply in such additional sectors, i.e., no new Market Access or National Treatment commitments are undertaken.

²¹ *Services Domestic Regulation – Locking in Good Regulatory Practices*, WTO Staff Working Paper, ERSD-2021-14 (Sep. 2021).

²² *See e.g.*, India – Singapore CECA (2005); Pakistan – Malaysia (2008); Iceland – China (2014).

²³ The term 'new generation agreements' is frequently used for recent agreements that do not only cover trade in goods, but also issues such as services, investment, competition, as well as various good regulatory practice related issues.

²⁴ *Services Domestic Regulation*, *supra* n. 21, at 15.

Members by 2020.²⁵ The inclusion of increasingly ambitious SDR commitments aims to address regulatory obstacles and procedural red tape, as well as to spread good regulatory practices among trading parties. Moreover, undertaking such obligations at the international level can assist trading partners in fostering and locking in their domestic reforms aimed at making internal regulatory frameworks more conducive to business.

The second takeaway of this research is the following: the trend towards the inclusion of SDR obligations in services PTAs is reflected across economies at all levels of income and across all regions of the world.²⁶ One example is the 2020 Regional Comprehensive Economic Partnership (RCEP) which represents today the world's largest free trade agreement by GDP.²⁷ The RCEP comprises fifteen parties located in the Indo-Pacific region which range from lower-middle to high income economies. Interestingly, in RCEP, the set of SDR obligations in the 'Trade in Services' chapter is complemented by far-reaching, horizontal, rules, notably on the promotion of information sharing and cooperation among the parties with a view to facilitating the operations of small businesses. When looking at the African region, some of the regional integration instruments – such as the Common Market for Eastern and Southern Africa (COMESA) Regulations on Trade in Services or the Southern African Development Community (SADC) Protocol on Trade in Services – already provide a number of SDR obligations in line with those contained in the Reference Paper, including, for example, on encouraging the acceptance of authenticated copies of documents and electronic applications; informing applicants of additional information required to complete applications; as well as publishing in advance any measures of general application before adoption. Furthermore, it should be highlighted that, in the past few years, as mandated by Article 18.2 of the African Continental Free Trade Area (AfCFTA) Protocol on Trade in Services, ambitious negotiations are ongoing among the fifty-five African Union Member States for the development of regulatory frameworks for specific services sectors, 'taking account of the best practices and acquis from the Regional Economic Communications, as well as the negotiated agreement on sectors for regulatory cooperation'.²⁸

The third finding of this WTO research is also of relevance: economies that at present have not signed on to the Reference Paper at the WTO have nevertheless agreed to substantively similar obligations in the services

PTAs they have concluded. At present, it appears that more than thirty non-participants adopted at least some of the SDR disciplines in their recent agreements, with at least eight economies committing to more than half of them. The 2018 Asia-Pacific Economic Cooperation (APEC) Non-binding Principles for Domestic Regulation of the Services Sector is one insightful example. This best-endeavour instrument has paved the way for the implementation of a set of core transparency-related commitments – which closely resemble the Reference Paper – to enhance regulatory convergence and facilitate services trade among the twenty-one economies in the Asia-Pacific region. Moreover, it is worth highlighting that all the services PTAs notified to the WTO in 2023²⁹ contain SDR obligations largely inspired by those in the Reference Paper, including the agreements signed by WTO Members that have decided for the time being not to incorporate the SDR disciplines in their GATS schedules of specific commitments. By way of example, the Economic Cooperation and Trade Agreement (ECTA) between Australia and India, which entered into force at the end of 2022, reflects closely the content of the Reference Paper. What is more, this Agreement also contains an Annex dedicated to professional services setting out tailor-made good regulatory practices which go well beyond the scope of the Reference Paper.³⁰

Overall, it appears that a large number of economies – at all levels of income and across all regions of the world – are utilizing both the adoption of the Reference Paper and their recent PTAs (at times not simultaneously) as complementary tools to uphold work on good regulatory practices at the domestic level. As services increasingly constitute the backbone sector of many economies and the key component of national development strategies, driving domestic reforms to improve the quality of regulatory frameworks applicable to service suppliers will continue to play an increasingly more important role in the coming years.

5 IMPLEMENTATION OF SDR AT THE DOMESTIC LEVEL: ASSESSMENT OF EXPECTED ECONOMIC EFFECTS

At a time when more and more economies are undertaking domestic regulatory reforms, the question has arisen as to what potential effects may result from the implementation of good regulatory practices. The OECD

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²⁵ *Ibid.*

²⁶ *Ibid.*, at 15–20.

²⁷ <https://www.dfat.gov.au/trade/agreements/in-force/rcep>.

²⁸ <https://au.int/en/treaties/agreement-establishing-african-continental-free-trade-area>.

²⁹ <http://rtais.wto.org/UI/PublicAllIRTAListAccession.aspx>.

³⁰ Australia-India ECTA, Annex 8C Professional Services, Art. 3.

calculated that putting the SDR disciplines into practice could make an important contribution to facilitate cross-border services trade by all four modes of supply.³¹ Impediments to services trade could be lowered on average by 11%. The effects would be greater in sectors where licensing processes and recognition of qualifications are more prominent, such as commercial banking, telecommunications, and insurance, as well as computer and professional services. This would result in annual trade costs savings in the range of USD 150 billion – with the most significant gains to be reaped by economies that implement the SDR principles in their own regulatory frameworks (and not just benefitting from the Most-Favoured-Nation (MFN) application).

Implementation is likely also to generate broader trade benefits for the economy as whole. An analysis conducted by the WTO found that implementation is associated with an increase in services trade by all modes of supply.³² Economies that are applying the good regulatory practices set out in the Reference Paper trade substantially more services, than economies where regulatory systems are less clear and transparent and there remain procedural red tape. Furthermore, the WTO analysis suggested that economies that apply more aspects of the SDR disciplines tend to be more actively involved in global value chains.³³ In today's interconnected world, greater participation in value chains means an increase in productivity and diversification of exports, as well as new employment opportunities and further spill over effects, including knowledge and technological progress, skills development, and improved working conditions.

6 CONCLUSION

The Reference Paper presents a rare success story in WTO negotiations on services trade. The new outcome responds

to the services business community's call for greater transparency and predictability in licensing and qualification processes, preserves the right to regulate in the pursuit of domestic policy objectives, and provides significant implementation flexibility for those WTO Members that are willing to undertake such commitments at the international level. While more and more economies are working on domestic reforms to improve the quality of their regulatory systems, the full implementation of the SDR disciplines is projected to significantly reduce trade costs and to generate broader economic benefits on a MFN basis. The SDR disciplines will likely spread beyond those WTO Members that have already signalled their intention to undertake them, and continue to represent a building block, or starting point, for future economic cooperation agreements, including with current non-participants.

By all accounts, the current obstacles in giving the Reference Paper legal effect in the WTO have little to do with the content of the SDR disciplines themselves. Rather, the challenge comes from differences in view between WTO Members as to how outcomes negotiated by sub-groups of the WTO Membership, such as the recent Joint Initiatives, can be brought into the WTO legal framework. While complex, cross cutting, negotiating initiatives addressing trade governance measures will benefit from, and require the cooperation of all WTO Members for their integration into the WTO architecture, the Reference Paper should not face such difficulties. Following established GATS procedures, it can be given legal effect through improved commitments to be integrated in interested WTO Members' GATS schedules – analogous to the autonomous liberalization by groups of WTO Members in trade in goods, such as most recently in the Information Technology Agreement, or in Pharmaceuticals.

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³¹ https://www.wto.org/english/tratop_e/serv_e/oeecd_wto_trade_policy_2021.pdf.

³² Services Domestic Regulation, *supra* n. 21.

³³ *Ibid.*