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UNCTAD

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Fourth Session

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Services Trade and Regulatory Cooperation

(Presentation through Videoconference)

SESSION # 2

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Services Trade and Regulatory Cooperation

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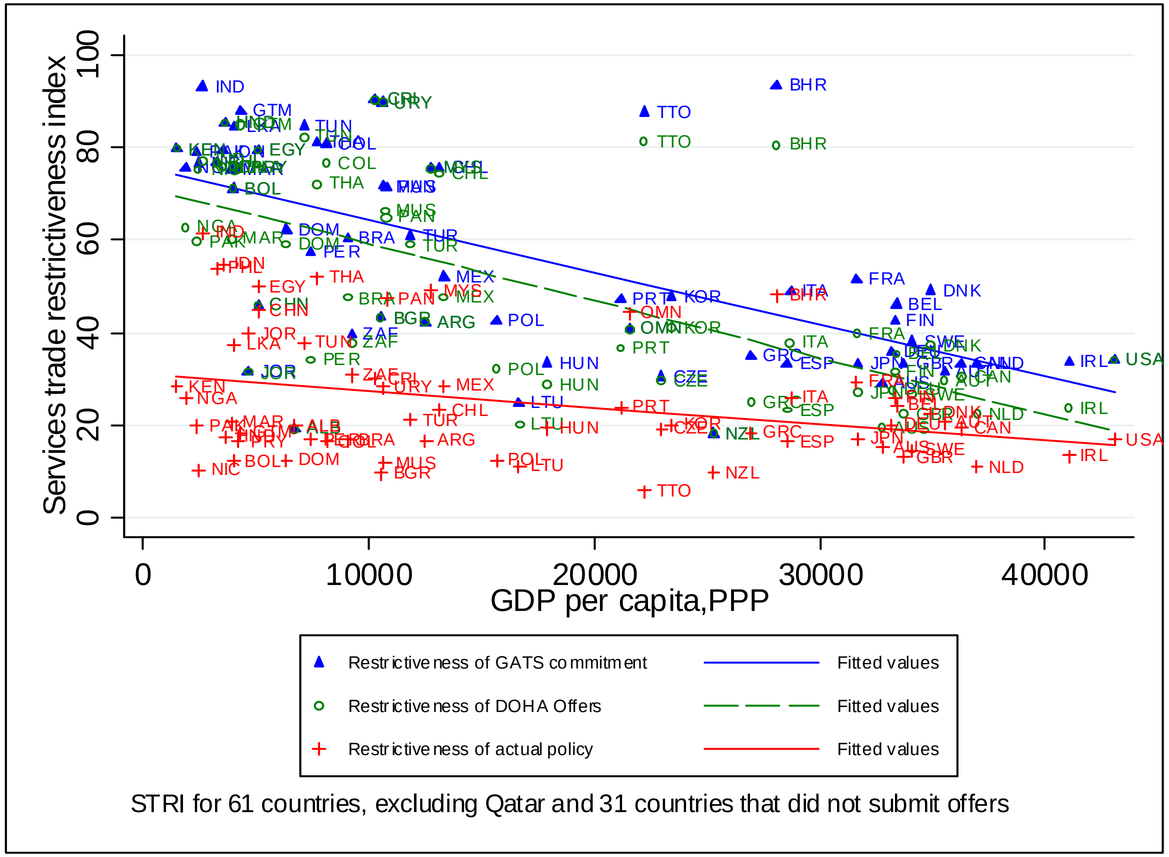
UNCTAD Expert Meeting

Multilateral negotiations have struggled to eliminate protection

Uruguay Round Commitments, Doha Offers and Actual Policy

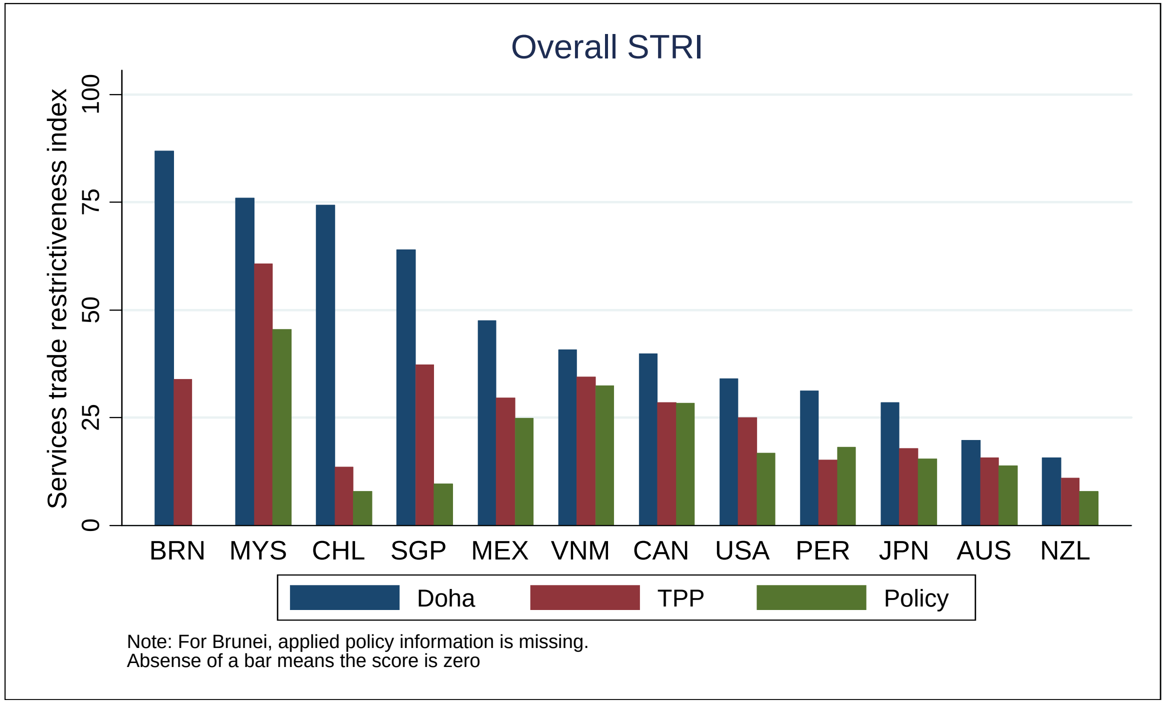


Ingo Borchert, Batshur Gootiiz and Aaditya Mattoo (2011), Services in Doha: What is on the Table?, in Will Martin and Aaditya Mattoo (eds.), *Unfinished Business: The WTO's Doha Agenda*, CEPR and World Bank, London.

…and to curtail implicit protection

The TPP too has delivered credibility but not much liberalization

Services Trade Restrictiveness Indices for TPP Countries
Doha Offers, **TPP Commitments** and **Applied Policy**



Source: Batshur Gootiiz and Aaditya Mattoo (2016), Does TPP Bring More Openness in Services?

Example: 1. "The US reserves the right to adopt or maintain any measure…"

- **Transport**: "…relating to the provision of maritime transportation services …"
- **Cross-Border Trade**: "…that is not inconsistent with the US' obligations under the GATS…."
- **MFN**: "…that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement."

Mode 4: "the United States is not undertaking any commitments in this area."

2. Malaysia: licenses based on "prudential considerations and "the best interest of Malaysia."

In services, liberalization and regulatory cooperation are not separate processes

But regulatory cooperation is often a pre-condition for liberalization

Main points

Today:

- A *"producer-driven" approach*: domestic regulation as an impediment to market access, and hence effort to
  - Create disciplines on importers (a la GATS) or
  - Negotiate harmonization/mutual recognition
- But this approach fails to address the problem of international market failure, to discipline regulatory discretion and to garner political support

Proposed:

- A new *"consumer-based" approach:* **exporting country regulatory commitments as a condition for market access**, could deliver both regulatory cooperation and further liberalization
- But we will need to watch out for the excluded

Current “producer-driven” approach: domestic regulation as an impediment to market access

Even though services sectors are different, the types of market failure and reasons for regulation are similar

Market failures	**Services sectors**	**GATS and GATS + response**
Monopoly/ Oligopoly	Network services: telecommunications; transport (terminals and infrastructure), and energy services (distribution networks).	Transparency (Articles III and IV) Non-discrimination (Articles II and XVII) No quantitative restrictions (Article XVI) + Rules on Monopolies and Exclusive Service Suppliers (Article VIII), Annex on Telecom, Telecom Reference paper + Notional rules on (anti-competitive) business practices (Article IX)
Information problems	Intermediation and knowledge based services: e.g. financial and professional services.	Transparency (Articles III and IV) Non-discrimination (Articles II and XVII) No quantitative restrictions (Article XVI) + draft accountancy disciplines including a "necessity" test
Externalities	Transport, tourism, etc.	

… and these similarities provide the basis, at least in principle, for a horizontal rules-based approach.

Current market-access centered approach does not address the problem of regulatory externalities

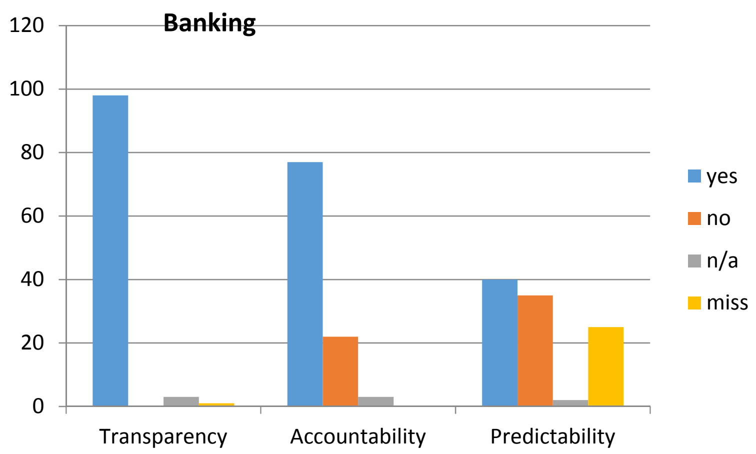
International Market failures	**Regulatory externality**	**Consequences**
International Monopoly/ Oligopoly	In a range of services, limited scope or enforcement of competition policy can allow firms in one country to behave anti-competitively in another country and appropriate the gains from liberalization. E.g. financial, transport, and new digital services	Countries may not be able to unilaterally address anticompetitive practices because of jurisdictional, informational or capacity limitations. Unilateral action may take the form of market access and operational restrictions – which are hard to distinguish from protectionism. The legitimate grounds for unilateral action may make it difficult to enforce existing GATS commitments.
Information problems	Inadequacy or differing objectives of regulation in one country can lead to financial instability, data leaks, and other adverse effects on consumers in another country.	Countries inability to unilaterally address international market failure efficiently may lead to market access or operational restrictions, like local capital adequacy or local server requirements. The legitimate grounds for unilateral action may make it difficult to enforce existing GATS commitments.

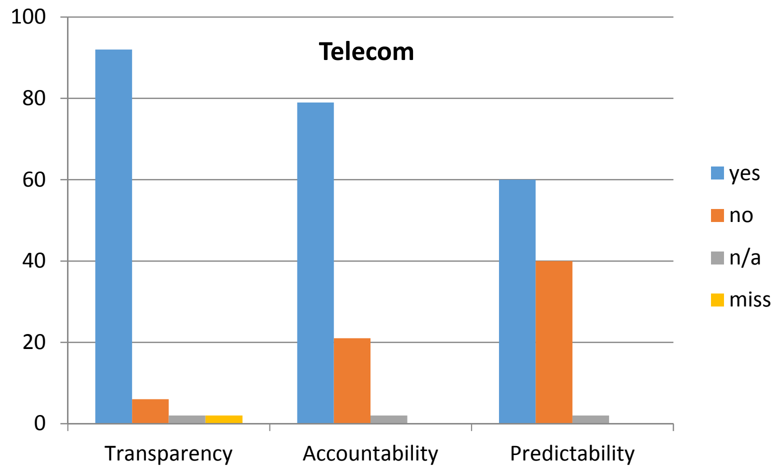
… and that may make it difficult to enforce existing commitments or to secure new liberalization.

Protection often takes a subtle form

Transparency, accountability and predictability

Criteria are usually public, reasons for denial are often provided, but fulfilment of publicly stated criteria does not automatically lead to a license being issued





Source: World Bank Services Trade Restrictions Database + work in progress with WTO

Discretion in licensing can dilute implementation of key disciplines

- The national treatment (Art XVII) and MFN (Art II) obligations apply to *like* services and service providers, but have limited force if likeness is in the eye of the regulator (e.g. regulation of professional services)

- The market access (Art XVII) obligation *prohibits de jure quotas but not de facto quotas* which can be applied by varying regulatory stringency (e.g. licenses for financial services or accountants)

Proposed strengthening of disciplines can create an additional "hold-back" problem

- In the goods world, where NT is a general obligation, quotas are prohibited and tariffs are bound, strict disciplines on technical barriers did not create a "hold back" problem

- In services, where specific commitments do not yet cover all sectors or measures, premature stringency of regulatory disciplines on importers can inhibit willingness to liberalize or bind.

- Reaching for the first best of deep goods-like disciplines makes even the second best of across-the-board basic MA and NT disciplines hard to attain

A new "consumer-based" approach: exporting country regulatory commitments as a condition for market access

Why? Security is a growing concern in an insecure world

And this concern affects multiple services markets

- Digital trade and informational security
- Financial internationalization and financial security
- Labor mobility and security
- Demographic change and health and old-age security

A. Regulators tend to limit their concerns to consumers in their own jurisdictions

B. importing jurisdictions cannot acting on their own efficiently prevent adverse spillovers

Conventional vs Proposed Approach

Conventional approach: negotiations about exchange of **market access commitments by importers**
Does not work for services

For services to be global, regulation cannot be national

Inability to protect consumers leads to:
- protection (esp on modes 1 and 2) or
- burdensome requirements (esp on modes 3 and 4).

ECIPE EUROPEAN CENTRE FOR INTERNATIONAL POLITICAL ECONOMY

The Costs of Data Localisation:
A Friendly Fire on Economic Recovery

Needed: a mechanism to protect consumers from international market failure
Proposed: **regulatory commitments by exporters t**o protect foreign consumer interests in return for market access commitments by importers

How exporting country regulatory commitments work: data flows

The problem

The necessary bargain

Exporting country commitments to adhere to importer standards of privacy in return for free data flows

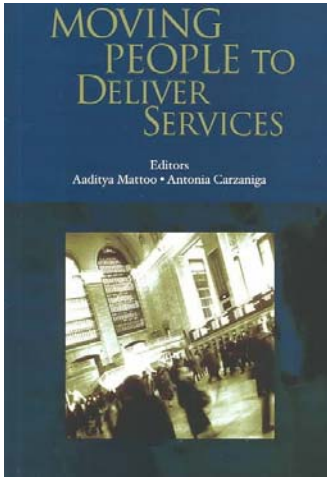
Examples

•EU-US Safe Harbor Agreement; renegotiated as EU-US privacy shield;

•TPP provisions on data flows matched by provisions on protecting privacy and preventing fraud

How exporting country regulatory commitments work: labor flows

The problem

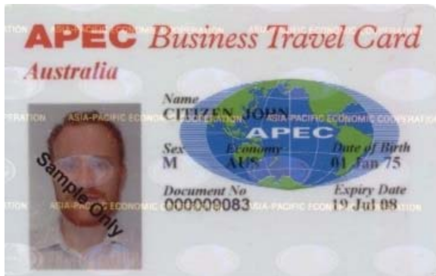


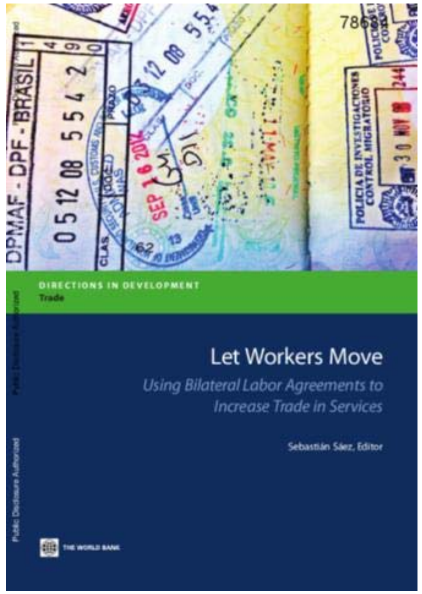
The necessary bargain

Source country commitments to certify character and qualifications, facilitate repatriation, combat illegal migration in return for freer labor mobility

Examples

- Bilateral labor agreements between Spain-Ecuador; Korea-Philippines;
- APEC Business Travel Card





How exporting country regulatory commitments work: financial services

The problem

Dodd-Frank ends capital exemptions for European banks

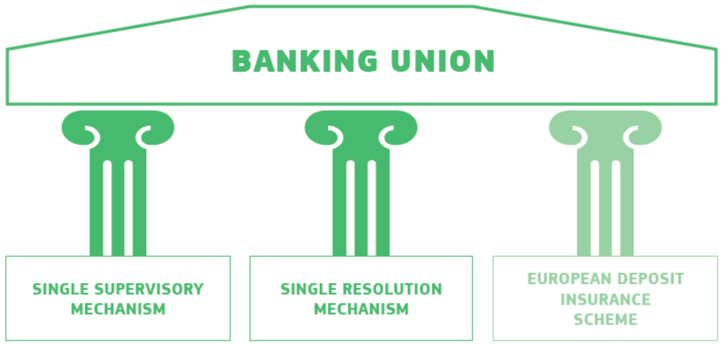
Financial crisis: Banks reduce credit supply in emerging Europe

Examples

- EU efforts to preserve the internal financial market EU-US markets
- EU-US discussions under the TTIP
- Vienna Initiative, for macroeconomic stability in emerging Europe

The necessary bargain

Exporting country commitments to protect interests of foreign consumers, financial stability, and avoid "financial nationalism", etc. in return for market opening



EBCI | Vienna Initiative

European Commission · European Investment Bank The EU bank · European Bank for Reconstruction and Development · International Monetary Fund · WORLD BANK GROUP

How exporting country regulatory commitments work: competition policy

The problem

Rigging of Foreign Exchange Market Makes Felons of Top Banks

EU, US exemptions from competition policy for export cartels

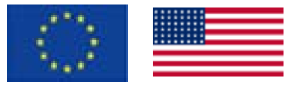
The necessary bargain

Exporting countries to enforce competition rules to protect interests of foreign consumers in return for market opening

Examples

- EU-US cooperation on price rigging by financial institutions,
- EU-US action on collusive arrangements in air and maritime transport;
- APEC initiatives on competition policy;

Airlines Come Under EU-US Cargo Cartel Probe



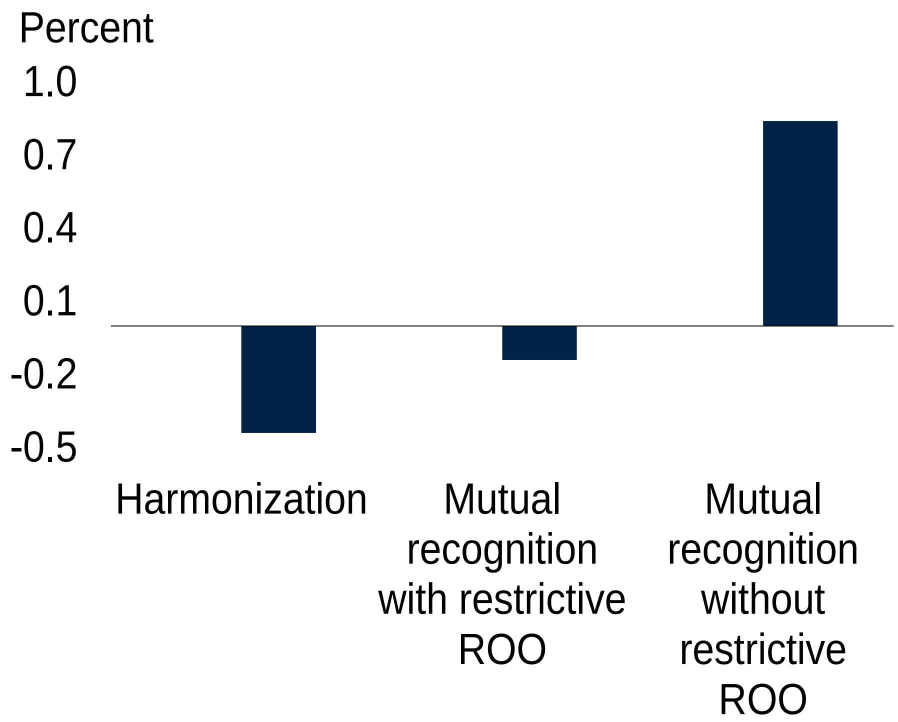
European Commission - Press release
Competition: EU and US celebrate 20 years of cooperation; agree to advance cooperation further

Watching out for the risk of excluding developing countries

Risk of trade based on mutual trust rather than comparative advantage

Recognition without restrictive rules of origin promises the greatest benefits to third countries

Impact on trade volumes with non-members



Source: Chen, Maggie Xiaoyang, and Aaditya Mattoo (2008), Regionalism in Standards: Good or Bad for Trade, *Canadian Journal of Economics*, vol. 41, 838-863
Notes: ROO = Rules of origin.

Watching out for the excluded

- GATS Article VII on Mutual Recognition Agreements balances permissiveness with “open recognition” (VII:2) and non-discrimination (VII:3)
- Preserve right to leverage MRAs via MFN principle and prevent dilution by treating MRAs as covered by Article V on regional agreements
- Ideally:
  - Participants favor mutual recognition without restrictive rules of origin.
  - Where harmonization is chosen, a stronger presumption in favor of international standards where they exist.
  - Develop WTO mechanisms for multilateralizing MRAs.

Resisting the tyranny of harmonization to avoid exclusion within countries

In Mexico, the introduction of simplified bank accounts
with less burdensome information requirements is associated with an increase in the number of deposit accounts

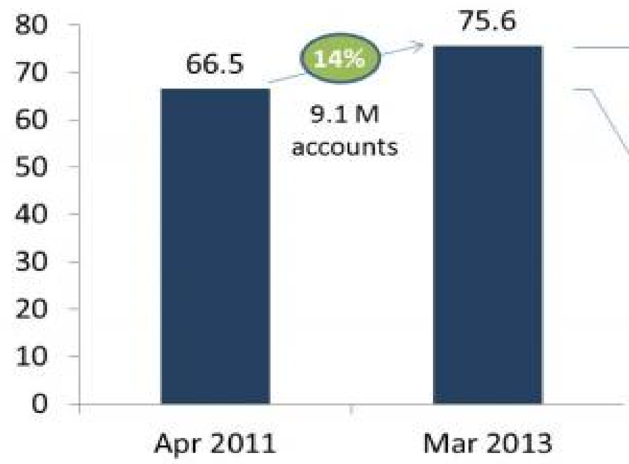
Mexico's tiered scheme for opening deposit accounts

	Level 1	Level 2	Level 3	Level 4 - Traditional Bank Account
Max Amount in monthly transactions USD/Month	280 + Max Balance of 370 USD	1,110 [1]	3,700	No limit imposed by regulation
Customer information required to open account	None	Basic: Name, date and place of birth, gender and address	Complete customer information	Complete customer information
Hard copy required?	Not applicable	No	No	Yes
Face to face account opening required?	No	No [2]	Yes	Yes
Means to access funds	Only debit card (for national use). No mobile.	Any electronic means (mobile, card, bank transfers)	Any electronic means (mobile, card, bank transfers)	Any electronic means (mobile, card, bank transfers), and cheques

Notes:
1 Level 2 accounts allow additional 2,220 USD in transactions per month if resources originate exclusively from government programs
2 Bank may opt for face-to-face procedure

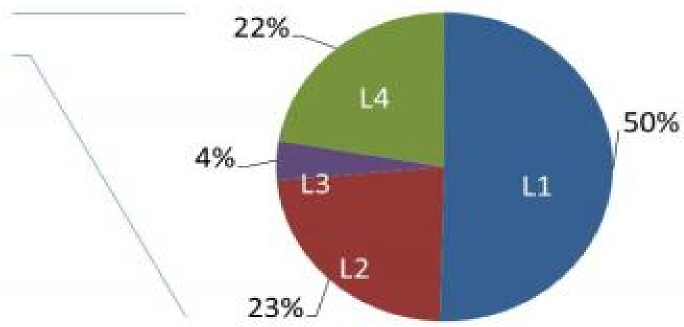
Source: Banxico Circular 2019/95 as modified by Circular 14/2011

Deposit Accounts in Commercial Banks (Levels 1 – 4)
Million accounts



Distribution of Growth

100%= 9.1 M accounts



Distribution of accounts opened between 04/2011 and 03/2013

Source: National Banking Commission reports (CNBV), 2013

Source: Xavier Faz (2013), Mexico's Tiered KYC: An Update on Market Response, CGAP

Three concluding suggestions

- **Strengthening national regulation**
  - Identify sectors where regulation matters for trade liberalization
  - Diagnose and remedy regulatory inadequacies
  - Country- and sector-specific advice and assistance on sequence of regulatory reform and liberalization

- **Advancing International regulatory cooperation**
  - Identify sectors where absence of regulatory cooperation matters for trade liberalization
  - Facilitate cooperation and ensure coherence with trade negotiations; developing country participation.
  - Country- and sector-specific advice on sequence of regulatory cooperation and liberalization.

- **Addressing the risk of exclusion**
  - Reaffirm relevant WTO MFN-related provisions (GATS Article VII).
  - Restrain use of exclusionary rules of origin
  - Support development of appropriate standards in developing countries.