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**Domestic regulation disciplines proposed in
some recent trade agreements**

by

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The views expressed are those of the author and do not necessarily reflect the views of UNCTAD.

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Some mega-regionals

- Trade In Services Agreement (TISA) countries: Australia, Canada, Chile, Colombia, Costa Rica, EU, Hong Kong, Iceland, Israel, Japan, Korea, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Switzerland, Taiwan, Turkey and USA
 - Most recently leaked texts: <http://bilaterals.org/?-mega-regional-ftas->
- Regional Comprehensive Economic Partnership (RCEP) countries: ASEAN, Australia, China, India, Japan, Republic of Korea and New Zealand
 - Leaked services chapter: http://bilaterals.org/IMG/pdf/services_consolidated_text_-_5aug2015.pdf
- Trans-Pacific Partnership Agreement (TPP) countries: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Viet Nam
 - Legally scrubbed text: <https://www.tpp.mfat.govt.nz/text>
- Some recent EUFTAs:
 - Comprehensive Economic and Trade Agreement (CETA): Canada & EU, legally scrubbed text: http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154329.pdf
 - EU-Vietnam FTA texts: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1437>
 - EU-Japan FTA domestic regulation disciplines: http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155708.pdf

Scope

- ‘measures relating to’
- Licensing requirements and procedures
- Qualification requirements and procedures
- Technical standards
- Only applies to the sectors liberalised? (negative list v positive list)
- Coverage of subnational government measures?
 - Art 1.3 GATS: ‘For the purposes of this Agreement:
 - (a) "measures by Members" means measures taken by:
 - (i) central, regional or local governments and authorities; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
 - **In fulfilling its obligations and commitments under the Agreement, each Member shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory;**

Some of the main substantive disciplines proposed

- Objective
- Transparent
 - Proposed footnote to ‘objective and transparent’ in TISA: Such criteria may include, inter alia, competence, ability to supply a service or potential health or environmental impacts of an authorisation decision, and competent authorities may assess the weight to be given to such criteria
- Not more burdensome than necessary
 - not more trade restrictive than are required to achieve the policy objectives of the measures
 - Not in themselves a restriction on the supply of the service
- Pre-established/established in advance
- As simple as possible
- Authorisation fees are reasonable, transparent and proportionate/commensurate with the administrative costs/do not in themselves restrict the supply of the relevant service
- Authorization, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein
 - Authorisation fees do not include payments for auction, the use of natural resources, royalties, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to provide a universal service



Thank you

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