

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

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**Domestic regulations and trade liberalization in services**

**SESSION # 2**



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MULTI-YEAR EXPERT MEETING ON TRADE, SERVICES AND  
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FOURTH SESSION  
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Room XXVI, Palais des Nations, Geneva**

**Panel on Domestic regulations and trade liberalization in services**

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# WTO parallel track to liberalization commitments and trends in the regions

- Challenges for developing countries faced with duality on the potential impact of domestic regulatory discipline obligations on their regimes versus desire for commitments from other markets to benefit their services exporters.
  - Impact on their services exports
  - Right to regulate with respect to services imports
  - Extent of regulation in place for sectors?
  - Multilateral disciplines – desire for disciplines on others for qualification requirements and procedures v. concerns about obligations on them and necessity test (see U.S. & Brazil concerns)
  - RTAs – disciplines creating parallel standards, practices could engulf those outside; competitiveness challenges if do not have a pathway toward cooperation and coherence of regulatory practices.
- As traditional market access barriers diminish, regulatory barriers become a more predominant complaint

- WTO Domestic Regulations negotiations
  - Professional services
    - Accountancy disciplines
    - Legal, architects, Engineers
  - Telecommunications
  - Financial services
  - Tried to look at typical measures, illustrative list
- Horizontal v. sectoral debate
- Pursuit of horizontal, at first mainly advocated by developing countries. Now main proponents are certain developed and more advanced developing countries.

- Advances on horizontal to Hong Kong and thereafter
- Breakdown
- TISA - much about regulatory commitments
- Other RTAs – developing country participation; regional such as the march to the Continental Free Trade Agreement for Africa? National to regional , jumping to models in other regions ? Does the shoe fit?
- Signs of activity – Post-Bali
- LDC Services Waiver - signs of early treatment and cross linkages with the GATS Article VI.4 discussions?
- VI.4 challenges and stalemate, though it is a built in GATS mandate
- Yet TISA elements spilling back into WTO discussions– PBWP, post-Nairobi? US TISA annex?

# Battle of the Tests

- Elements in VI.4, includes transparent, predictable, objective, non-discriminatory;
- Even if a regulation is not discriminatory, does it act as a market access barrier? If there is no discrimination can there be a legitimate objective for the regulation that impacts on market entry?
- Restriction that discriminates? **Not more burdensome than necessary to achieve legitimate objectives/ensure quality of the service? Not in themselves a restriction on supply of services?**

OR

- **Not a disguised restriction** on trade in services
  - Find also in GATS Article VII.3, Article XIV general exceptions, Telecom Annex
  - How to define? Leave to panels or legislate?
  - GATT jurisprudence Article XX – Better than on “necessity” for scrutiny?
  - GATS XIV – Gambling (did not turn on disguised)
  - May be resolved through TISA work - can it be adapted to multilateral or plurilateral Article VI.4 agreement?
- Question of horizontal v. sector specific application?

# Multilateral coherence, cooperation?

- U.S. went for “transparency” in VI.4 for a reason; From 2002 sought to more ambitious DR commitments to address constituency needs through scheduling Article VIII column, or reference paper style in tandem with bind liberalization, when WPDR talks were not responsive to concerns; See also similar elements in Trade Facilitation Agreement.
- Developed already have high level of domestic regulatory disciplines; what they are seeking in the WTO is to capture more developing countries. Multilateral threshold beyond VI.1, 2 and 3. Where are industries (financial, professions, telecom, etc) and consumers having problems? What can the line agencies can bear? Impact on population at large?
- Similar rationale in TPP; why some TPP developing country parties sought disciplines for services- start with better transparency rules in developing country parties! TPP includes best endeavors special combination areas – engineers (recognition and licensing), architects (recognition), legal (market access).
- TPP model- includes DR crossborder including professionals, separate sections in financial services/telecom chapters, chapter on regulatory coherence.
- Developing and LDC however needed more than transparency commitments given the high toxicity of regulatory barriers in developed markets even if they are transparent; still market access barriers.
- However, horizontal reach was problematic.

# Principles for broader coherence and cooperation debate

- Elements in TPP and US TISA annex, almost the same.
- WTO DR negotiations - **Fees, authorization, commissions fees, other** - What is “reasonable”? Came up in TF negotiations as well. What about fees for visa, work permits, residence permit, application fees? Fees that are restrictions on market access or act as a barrier?
- Burdensome procedures tantamount to barriers for certain developing country and LDC suppliers – Look at a TFA for services: single window concept, other elements for SDT flexibility – Not an exemption.
- What to do about prior notice and comment?
  - **“Interested persons?”** Intrusion on domestic processes from foreigners? Depends on the eye of the beholder. See TPP standard for services; Trade Facilitation Agreement- notice and comment includes.
  - For U.S. anybody – even foreign entities - example of ATC phaseout , Sri Lanka etc...
- Applications- deficiencies, correction, language
- Facilitate testing in the home country
- Procedures to assess and facilitate recognition of qualifications in tandem with requirements and procedures needed to ensure the quality of the services rendered to consumers. Don’t forget services is driven by a no one size fits all demand. Likeness becomes more obscure depending on consumer satisfaction and tailored services.



# LDC services waiver process (2014 – 2015)

- Beyond Article XVI measures
- Moderate ambition –
  - Fees for visas, work permits, residency permits
  - Mechanisms to satisfy or waive residency requirements, which act as direct market access barrier to qualified professionals? Add necessary consumer protection elements? See TPP Legal services Annex 10-A.10(d).
  - Burdensome procedures and redtape
- Facilitate recognition - can suggest a mechanism similar to what is found in some RTAs be considered for recognition of LDC qualifications and institutions - LDCs are not asking to be exempt – come with ideas on such a mechanism to “enable” or **facilitate** – build on GATS Article VII.
- VI.6 - In sectors **where specific commitments regarding professional services are undertaken**, each Member **shall provide for adequate procedures to verify the competence of professionals of any other Member.**  
A mechanism? Guidelines similar to the ones agreed in 1997 for Accountancy? Something for LDCs?