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Disciplining Non-discriminatory Domestic Regulations in the Services Sectors – Another Plurilateral Track at the WTO*

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I. Background: A plurilateral process overlapping with an existing multilateral negotiation mandate

Multilateral discussions on disciplines of domestic regulations in services have been undertaken over years in the Working Party on Domestic Regulations, established under the Council for Trade in Services. These multilateral negotiations continued until the 11th Ministerial Conference of the World Trade Organisation (MC11), based on the GATS built-in negotiations mandate under Article VI.4 (See Annex for text of Article VI.4).

At MC11, a group of WTO Member States co-sponsored a 'new' proposal for disciplines (JOB/SERV/272, later WT/MIN(17)/7/Rev.2 as presented to MC11). No consensus was achieved at MC11 to continue negotiations based on this 'new' proposal. A plurilateral process was afterwards initiated. (See in Annex extracts from related ministerial statements.)

It is important to note that available public information about the plurilateral initiative on investment facilitation shows a significant overlap with the proposed disciplines on domestic regulations under the joint plurilateral initiative. However, while the latter focuses on regulations in sectors committed by Member States under the positive list approach of scheduling under GATS, the propositions under the joint initiative on IF would cover all investments in all sectors, which would potentially have much broader implications.

Discussing disciplines while the underlying classifications are not settled

With the spread of digitalisation, the goods and services sectors have been changing. Moreover,

* This analysis is primarily based on the publicly available proposal of the plurilateral initiative (WT/MIN(17)/7/Rev.2) as presented to MC11.

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'servicification' has been unfolding, characterised as the process by which 'everything in the production and distribution supply chain, except the final commodity, is being redefined as a service'[1], whereby trade in goods is increasingly conducted through services.

With these changes, including the emergence of new digitalised services, multiple issues arise regarding the classification of both goods and services.

For example, questions arise as to whether music, film or software in a CD or a piece of music, book or film transferred electronically should be classified as goods or a service[2].

New digital technologies like 3D printing allow manufacturing of products to take place remotely, including of any three-dimensional product, such as consumer products, medical products, industrial applications and the like. 3D printing relies on a special type of file known as Computer-Aided Design (CAD) files that are transmitted across borders electronically. It is not clear whether the electronic transmission of such files should be covered under the General Agreement on Tariffs and Trade (GATT) or the General Agreement on Trade in Services (GATS)[3].

Furthermore, questions arise regarding the classification of digitalised services, including the modes of supply they fall under. For example, it is not settled whether digitalised services such as Uber would be classified as a transport or a computer service, and whether it would be considered as a service supplied across the border (i.e. Mode 1 under GATS) or a service consumed abroad (i.e. Mode 2 under GATS)[4].

Whether digital content is treated as goods or services can have multiple implications, including whether it would be covered under the GATT or GATS rules, and thus whether customs duties would be imposed on them, or whether the GATS rules would apply, thus including disciplines on domestic regulations too[5].

It has been noted that the fact that music and software can be sent electronically implies that the carrier remains the goods but the music and software in it are intangibles and therefore similar to services[6]. Yet, as noted above, it is not clear how these 'new' services would be classified under GATS[7].

Developing disciplines on domestic regulations that apply across the board to all services where a Member has undertaken commitments while questions pertaining to classifications are still unfolding could potentially mean that new disciplines would apply to an underlying commitment that was not necessarily defined at the time the disciplines were agreed.

II. The role of domestic regulations

It is generally accepted that liberalisation requires re-regulation of original regulation.[8] A paper by the WTO Services Division in 2011 pointed out that a government may need domestic regulations for multiple reasons[9]. These include making basic services such as education or health services available to all citizens based on equitable conditions when provided by private commercial entities, furthering policy objectives such as job creation or access of disadvantaged persons to the labour market, tackling fraud or tax evasion, or dealing with negative externalities arising from such services, such as environmental effect of intensive tourism or regulating for prudential reasons to address excessive risk-taking in the financial sector (see for example a Box from the referenced WTO paper listing examples of situations where

1 Jane Kelsey (2019), 'Understanding the EU's Understanding on Computer and Related Services', Third World Network (forthcoming).

2 Rashmi Banga (2019), 'Growing Trade in Electronic Transmissions: Implications for the South', UNCTAD Research Paper No. 29, UNCTAD/SER.RP/2019/1.

3 Ibid.

4 For more reflections on this matter, listen to presentation by Jane Kelsey during the WTO Public Forum 2019, available at the following address: https://www.wto.org/audio/pf19session111.mp3

5 See: Jane Kelsey (2019), 'Understanding the EU's Understanding on Computer and Related Services', Third World Network (forthcoming).

6 Banga (2019).

7 'In discussion of the issue of possible new services, it was the *general* view that electronic delivery had given rise to very few new services, if any, but that *further work is needed* to identify any such services and decide how they should be classified. *Some delegations* argued that the identification of new services should be done keeping in mind the existing classification structure based on the Services Sectoral Classification List (MTN.GNS/W/120) and the UN CPC'S/L/74, para. 26.

8 Markus Krajewski 'Domestic regulation and services trade: lessons from regional and bilateral free trade agreements' and 'Disciplines on Domestic Regulation pursuant to GATS Article VI.4, Background and Current State of Play', prepared by WTO Trade in Services Division, June 2011, para 8, available at https://www.wto.org/english/tratop_e/serv_e/dom_reg_negs_bckgddoc_e.doc

9 WTO, ibid.

specific regulations are used to achieve certain policy objectives).

Generally, as countries witnessed change in their services sectors, such as a move from 'natural monopoly sectors' in telecommunications, postal, rail transport, energy and water, towards having multiple players, they have undertaken changes to the type of regulations put in place (which included moves from 'entry controls' to 'price controls' and 'standard-setting' regulations)[10]. The use of different combinations of these regulatory tools depends on the nature of the sector, level of liberalisation, institutional capacities available at the national level, and various public policy objectives.

Furthermore, with the change in the services sectors, where services are expanding as increasingly physical goods are being provided as services, and where services are increasingly provided through electronic transmissions, States will face the need to rethink the need for, or the kind of regulation, in these areas. The role of regulatory authorities might need to change, and new regulatory authorities might be needed.

Recently, many countries, including developed countries, have been expanding the 'screening' and 'authorisation' of foreign direct investment (including services provided through Mode 3 under GATS), including regulating and controlling the conditions of foreign takeovers[11].

The drafters of the GATS were aware of the inherent tension between domestic regulatory space and trade liberalisation when they recognised in the GATS preamble 'the right of Members to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right'.

The complexity of the processes pertaining to authorisations is a function of institutional capacity that itself is a matter closely linked with levels of development. In this context, it is important to assess the potential implications of any set of disciplines to be agreed on the role of regulatory authorities, whose role and practice would potentially be scrutinised under the multilateral set of rules to be agreed.

In this context, it is not enough to include language in the negotiated text that recognises the right to regulate (i.e. such as: 'Members recognize the right to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet their policy objectives'). While this language recognises the sovereign right to regulate, it does not preclude a legal challenge against a State on the grounds that it administered a regulation in a manner that does not fulfil the standards and criteria set under an agreed international instrument, such as a WTO law.

In effect, such questioning of domestic regulations via the WTO dispute settlement mechanism, and based on international disciplines and standards to be agreed, challenges the boundaries of a State's regulatory space and the role of its regulatory authorities.

This is why it is crucial that the design of any disciplines accounts for the regulatory autonomy and space needed in different developmental contexts.

10 Entry controls include quantitative or qualitative prerequisites that have to be adhered to before a supplier can enter the market, also known as prior approval or screening measures, such as the number of airlines that can have a share of the domestic routes or limits on the number of trucks in order to encourage rail transport. Qualitative controls include qualification requirements for service providers, but also prior approvals before marketing 'harmful' products such as alcohol or firearms, or activities that could cause risks to others – setting up of private hospitals, hunting licences, etc. Price control regulations could include rent controls, fixed fees for lawyers or fixed prices for taxis; price controls regarding energy or telecommunication services, or price controls limiting the increases in retail prices for critical services such as water, gas, electricity and telecommunications.

11 For example, in 2014, France (Decree n°2014-479, 14 May 2014) widened the field of sectors that fall under the authorisation procedure to six sectors essential for the preservation of the country's interests: energy supply, water supply, transport networks and services, electronic communications networks and services, measurable works, installations and establishments vital in terms of the Defence Code, and the health sector. According to a governmental website, the decree aims at reinforcing the control measure of foreign investments in the sensitive sectors likely to call the national interests in question – public order, public security, interests of national defence. See: https://www.gouvernement.fr/en/foreign-investments-subject-to-authorization-what-does-the-decree-say

III. Some aspects of the substantive content under discussion and its potential implications[12]

A broad scope of coverage

The proposed disciplines would apply to measures by Members relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards affecting trade in services.

The following descriptions are partially based on a WTO document[13]:

'Licensing requirements' are substantive requirements, other than qualification requirements, with which a natural or a juridical person is required to comply in order to obtain, amend or renew authorisation to supply a service. For example, these would apply to water supply services, mining, logging and other resource extraction projects, education services, hospitals and healthcare facilitates, transport operators, among others.

'Licensing procedures' are administrative or procedural rules that a natural or a juridical person, seeking authorisation to supply a service, including the amendment or renewal of a licence, must adhere to in order to demonstrate compliance with licensing requirements.

'Qualification requirements' are substantive requirements relating to the competence of a natural person in relation to the supply of a service, and which are required to be demonstrated for the purpose of obtaining authorisation to supply a service. For example, these would apply to doctors, nurses, engineers, electricians, accountants, teachers, journalists, drilling and mining operators, and other service providers.

'Qualification procedures' are administrative or procedural rules that a natural person must adhere to in order to demonstrate compliance with qualification requirements, for the purpose of obtaining authorisation to supply a service.

'Technical standards' are measures that lay down the characteristics of a service or the manner in which it is supplied. Technical standards also include the procedures relating to the enforcement of such standards.

The category of 'measures' under GATS is broad and has a non-exhaustive definition, covering any measure by a member, in the form of a law, regulation, rule, procedure, decision, administrative action or any other form (See GATS, Article XXVIIIa Definitions).

The use of the term 'affecting' further expands the scope, as the government 'measure' does not need to be directly targeted at the service to '*affect*' it. For example, a policy change in the environmental, health, urban planning or other areas could potentially affect the technical standards that apply to a service provision.

According to GATS Article I.3, 'measures by Members' means measures taken by central, regional or local governments and authorities and non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities. Yet, GATS also provides that '[i]n 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' (See Article 1.3 GATS).

WTO Jurisprudence on 'measures affecting trade in services'

The Panel in *EC – Bananas III* defined the scope of application of the GATS in the following terms:

'[N]o measures are excluded a priori from the scope of the GATS as defined by its provisions. The scope of the GATS encompasses any measure of a Member to the extent it affects the supply of a service regardless of whether such measure directly governs the supply of a service or whether it regulates other matters but nevertheless affects trade in services.'

12 This section includes a partial discussion of some of the standards covered under the plurilateral discussion pertaining to domestic regulations. This analysis is primarily based on the publicly available proposal of the plurilateral initiative (WT/MIN(17)/7/Rev.2) as presented to the WTO MC11.
13 Chairman's progress report, S/WPDR/W/45, State of Play, paras. 5-9.

The plurilateral discussions also cover 'authorisations', which could generally be understood to mean the permission to engage in the supply of a service. This extends beyond the scope of the mandate under Article VI.4 GATS. Article VI.3 GATS already addresses authorisations (See Annex for text of this Article).

As currently discussed, the disciplines will apply to all sectors where specific commitments have been undertaken. Whether the disciplines should apply to all sectors or only those where commitments have been undertaken has been a contentious issue for a long time within the context of the negotiations. Yet, it is worth noting that the *raison d'etre* for the disciplines on domestic regulation was to ensure that domestic regulations do not render market access and national treatment commitments effectively meaningless[14].

As currently discussed, there is no recognition for distinctive treatment of domestic regulations pertaining to sectors that might be sensitive.

Disciplines to be applied at the stage of submission of an application for the supply of a service

The proposed disciplines provide that a 'Member shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorisation. A Member may require multiple applications for authorisation where a service is within the jurisdiction of multiple competent authorities' (WT/MIN(17)/7/Rev.2).

Such a kind of discipline could prove to be challenging for regulatory authorities in instances where multiple regulators would be involved in the same application, such as a financial case where banking regulators and other authorities are involved. In some countries, such a requirement might conflict with regulatory systems where different levels of government share jurisdiction for regulatory approvals, such as in land development applications where local governments are responsible for reviewing local land use compatibility and senior levels of government are responsible for reviewing environmental and other impacts of broader concern.

Disciplines on measures related to authorisations

It is proposed that Members 'shall ensure that … measures [relating to authorizations] are based on objective and transparent criteria', 'the procedures are impartial…', and 'the procedures do not in themselves prevent the fulfilment of requirements'.

- ***Potential implications of using 'objective' as a qualifying standard*:**

Objectivity could have multiple meanings, such as 'not arbitrary', 'not biased', and 'relevant to the ability to perform or supply a service', 'not subjective' and 'least trade restrictive'[15]. Such obligations could conflict with the discretion of regulators in certain subjective considerations, which are core to a regulatory process, and could be aimed at preserving historic or cultural values, or could appear in areas of infrastructure development, land development, among others. If understood as 'not subjective', this standard could be used as grounds to challenge regulation based on a 'public interest' standard or the subjective balancing required when there are multiple criteria for assessing the environmental, economic or community impact of an investment project.

- ***Potential implications of using 'transparent' as a qualifying standard***

At WTO compliance reviews, transparency has been contrasted with 'lack of clarity', 'open-endedness', and requirements that involve 'considerable bureaucratic discretion', and create 'uncertainty' for foreign suppliers[16]. If approached as such, the 'transparency' standard could imply challenges to the discretion of regulators in ensuring critical unquantifiable objectives to be met, such as 'general public interest', 'interest of the educational sector', 'honesty and integrity' in the business or financial sector, or the like.

- ***Potential implications of using 'impartial' as a qualifying standard***

'Impartial' could be interpreted as meaning neutral, or not involving 'partiality' to particular

14 See: Krajewski, referencing Aaditya Mattoo and Pierre Sauvé, 'Domestic Regulation and Trade in Services: Looking Ahead', in Aaditya Mattoo and Pierre Sauvé (eds), *Domestic Regulation and Service Trade Liberalization* (OUP 2003).

15 Professor Robert Stumberg, 'Memorandum — GATS proposal that domestic regulations must be "objective"' (2007).

16 See: 'Some Analyses of Domestic Regulation Disciplines — Compilation for MC 11', Sanya Reid Smith (2017), Third World Network, available at: https://www.twn.my/briefings_MC11.htm

categories of applications such as small business, disadvantaged groups and non-profits[17]. Such an approach could potentially conflict with the recently stated objectives of facilitating participation of small and medium-sized enterprises in international trade.

Restrictions on timeframes for processing applications and related fees

The proposal on processing of applications provides that a Member shall '…within a reasonable period of time after the submission of the application, ensure that the processing of the application is completed', '…shall ensure that authorisation, once granted, enters into effect without undue delay subject to the applicable terms and conditions', and that '[e]ach Member shall ensure that the authorisation fees charged by the competent authority are reasonable, transparent, and do not in themselves restrict the supply of the relevant service' (WT/MIN(17)/7/Rev.2).

- ***On 'reasonableness' of a time period***

'Reasonableness' is a subjective standard that does not clarify the threshold in comparison to which reasonableness will be assessed, from whose perspective it would be assessed, against what standards and criteria, and considering what range of competing factors.

WTO jurisprudence on reasonable interval:

In *US – Clove Cigarettes*, the AB noted: 'The obligation imposed on Members by Article 2.12 to provide a "reasonable interval" between the publication and the entry into force of their technical regulations carefully balances the interests of, on the one hand, the exporting Member whose producers might be affected by a technical regulation and, on the other hand, the importing Member that wishes to pursue a legitimate objective through a technical regulation.' (Appellate Body Report, *US – Clove Cigarettes*, paras. 274-275, 279-283)

Assessing periods of processing applications against such a standard could potentially mean comparing the average periods of processing applications among different countries irrespective of the specifics of the sector, or the institutional conditions in the State whose practices are being assessed. This could potentially challenge the discretion of the regulatory authorities in taking the time needed for thorough and complete regulatory assessments.

- ***'On undue delays'***

Under WTO law, 'undue delay' has been approached to mean 'promptly', 'quickly', and 'with no unjustifiable loss of time'.

WTO jurisprudence pertaining to Article X GATT on Publication and Administration of Trade Regulations:

Regarding promptness of publication, the Panel in *EC — IT Products* provided that: 'The meaning of prompt is not an absolute concept, i.e. a pre-set period of time applicable in all cases. Rather, an assessment of whether a measure has been published "promptly", that is "quickly" and "without undue delay", necessarily requires a case-by-case assessment. Accordingly, we will look at the time span between the moment the CNEN amendments were "made effective" and the time they were "published", and assess whether this is prompt in light of the facts of the case.' The Panel then found that in the circumstances of the case and in light of the nature of the measures at issue, publication in the EU Official Journal eight months later than the measure was made effective was not 'prompt'.

The Panel in *EC – Approval and Marketing of Biotech Products* examined 'undue delay' and concluded that: '…[it] requires that approval procedures be undertaken and completed with no unjustifiable loss of time'.

- ***On fees***

The proposed restriction on authorisation fees could potentially prevent certain regulatory practices including the charging of fees for legitimate policy objectives, and serving important regulatory functions through provision of public funds for certain public services.

Such disciplines do not reflect a recognition that

17 Ibid.

there are often differences in the way the fees are assessed and levied among different services sectors. For example, in the financial services, fees are often assessed on an ongoing basis rather than one-off.

It has been also noted that a requirement that fees 'do not in themselves restrict the supply of the service' could potentially arise to a 'necessity test' and that it refers to concepts which have or could be used in the application of a 'necessity test'[18].

Extensive transparency measures that could become intrusive on regulatory space

Multiple transparency elements are under discussion, including publishing in advance laws and regulations of general application proposed for adoption that are related to matters covered under the proposed disciplines, providing interested persons and other Members with a reasonable opportunity to comment on such proposed measures or documents, consideringthe received comments, and allowing reasonable time between publication of the text of a law or regulation and the date on which service suppliers must comply with the law or regulation.

With such obligations, WTO Members could be asked to[19]:

- Explain the justification of a regulation upon request by other Members,
- Notify other Members of the scope, objective and rationale of proposed regulations,
- Provide other Members with particulars or copies of the proposed regulations and allow other Members (and their service industries) to make comments on proposed regulations,
- Show that they have considered these comments or taken them into account.

It has been noted that 'prior consultation or prior comment requirements "internationalize" domestic decision-making processes, because it is no longer sufficient for a WTO Member's parliament or administration to take only the interests of domestic stakeholders into account. Rather, the views of other WTO Members and their service industries can become an important factor in the national regulatory process'[20].

Requiring mandatory comment opportunities open for service suppliers and 'other interested parties' could put a significant burden on the regulatory process in developing countries. Such exposure could potentially leave a 'chilling effect' on the regulatory process if the authorities are exposed to campaigns by the organised lobbies of big services industries.

The category of 'interested parties' could encompass an undefined open-ended class of parties. It could include an expanded list of entities that have a direct or indirect relation to the services covered by the disciplines, and do not necessarily have to be located in the territory of the Member State implementing the measure. This may lead to lobbying pressures and profiteering by interest groups.

Such lobbying and influence could tilt the balance in national regulatory and legislative processes away from the national constituencies and development priorities. This is specifically worrying in the context of the services sectors, given that the services industry lobbies are highly well organised and because such lobbying could end up impacting essential services sectors.

Taken together these transparency requirements could create burdensome obligations on Members especially given the broad scope underlying the proposed disciplines (as noted above)[21].

These requirements could potentially come into conflict with[22]certain measures that States might need to take such as:

- In the financial sector, limits on bank withdrawals imposed for indeterminate periods in the context of an imminent recession or crisis, could fall in conflict with the disciplines.
- Emergency economic laws enabling the executive to issue economic decrees in case of emergency or economic crisis, or government takeover of pension systems in case of crisis without enabling input and giving responses to input from foreign pension providers, could fall in conflict with the 'prior comment' requirement.

Such measures were taken by governments in response to economic crisis they faced.

18 'GATS negotiations on domestic regulation: a developing country perspective', by Mashayekhi and Tuerk.

19 Markus Krajewski,'Domestic regulation and services trade: lessons from regional and bilateral free trade agreements'.

20 Ibid page 14.

21 Robert Stumberg (2010), 'GATS Negotiations on Domestic Regulations', Harrison Institute for Public Law-Georgetown Law.

22 Ellen Gould (2009), 'The Draft GATS Domestic Regulation Disciplines — Potential Conflicts with Developing Country Regulations', prepared for the South Centre.

WTO jurisprudence:

WTO panels and appellate body have already found Members in violation of their obligations under 'transparency' rules in several cases, which shows a significant level of scrutiny that measures and processes of WTO Members could be subjected to in order to assess if they fulfil transparency-related requirements under WTO law. The following are examples where the WTO panels have tackled Article X GATT on 'Publication and Administration of Trade Regulations':

EC — IT Products
Thailand — Cigarettes (Philippines)
China – Raw Materials

Very limited consideration of special and differential treatment

Special and differential treatment discussed in the context of the plurilateral initiative on domestic regulations are limited to transitional periods, to be limited to individual services sectors or subsectors. It also includes technical assistance and capacity-building that would be provided on 'mutually agreed terms and conditions' between the requesting country and the provider, thus would necessarily be driven solely by the needs of the receiving country.

IV. Importing a potential plurilateral outcome through the schedules of commitments under GATS and its systemic implications

In May 2019, a joint statement by 59 WTO Member States participants in the plurilateral initiative on domestic regulations provided the following: '… We commit to continue working on outstanding issues with a view to incorporating the outcome of our work in our respective schedules of specific commitments by the Twelfth WTO Ministerial Conference.'

To fulfil this statement, it is proposed that the disciplines that could be potentially agreed would be inscribed in Members' schedules as additional commitments under Article XVIII of the GATS.

Article XVIII GATS provides that 'Members may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles XVI or XVII, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Member's Schedule'.

Currently, there are few such entries and they mainly relate to basic telecommunications and financial services.

Potential systemic implications

In case a subset of WTO Member States agree to certain disciplines, including criteria and standards to assess measures relating to authorisations, processing of applications for authorisations, among others, and import them under the WTO acquis through Article XVIII of GATS, this would raise a question as to whether the rest of the WTO membership could eventually move forward towards fulfilling the multilateral mandate under Article VI.4 GATS without being indirectly obliged to converge towards the disciplines already agreed by the plurilateral process.

If the rest of the membership do not converge towards what is agreed under the plurilateral initiative, then we could potentially witness the emergence of two parallel regimes of disciplining non-discriminatory domestic regulations in services under the WTO. Yet, if the rest of the membership do converge, then in effect that would mean that the fate of a multilateral mandate built under GATS has been decided by a subset of the WTO membership and not all.

ANNEXES:

Article VI.4 GATS

'With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, *inter alia*
(a) based on objective and transparent criteria, such as competence and the ability to supply the service;
(b) not more burdensome than necessary to ensure the quality of the service;
(c) in the case of licensing procedures, not

in themselves a restriction on the supply of the service.'

MC11: Joint Ministerial Statement on Services Domestic Regulations (WT/MIN(17)/61)

'3. We reaffirm our commitment to advancing negotiations on the basis of recent proposals as set out in WT/MIN(17)/7/Rev.2 and related discussions in the WPDR and future contributions by Members to deliver a multilateral outcome. …'

May 2019 Joint Statement on domestic regulations: 'We welcome the progress made in negotiation of Domestic Regulation disciplines since the Joint Statement adopted at MC11. …We commit to continue working on outstanding issues with a view to incorporating the outcome of our work in our respective schedules of specific commitments by the Twelfth WTO Ministerial Conference.'

Article VI.3 GATS

'3. Where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Member shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Member shall provide, without undue delay, information concerning the status of the application.'

Examples of services-specific regulation to pursue public policy objectives[23]

Equitable access
Sectors: In the transport or telecommunication sectors, governments often want remote regions to be served by such services regardless of profitability. Basic equity objectives also prompt governments to ensure that all citizens have access to education and essential health care at low or zero costs.

Measures: Cross-subsidisation schemes to ensure that revenues in profitable areas are reinvested in favour of underdeveloped regions or persons in financial need; licensing conditions which include 'universal service obligations' (for example, commercial hospitals are required to treat a certain percentage of patients free of charge).

Consumer protection
Sectors: With regard to professional, financial or health services, the complexity of the service that is provided makes it very difficult for consumers to appreciate quality or safety prior to consumption. Service suppliers may exploit such information asymmetries.

Measures: Prudential and other technical standards to be complied by service suppliers; publication requirements on costs, risks, side-effects, etc, so as to enable the consumer to make informed decisions; education and training requirements to ensure competence; mandatory professional liability insurance.

Reduction of environmental impacts and other negative externalities
Sectors: Road and air transport cause pollution and noise; tourism could put the environment under stress and disturb natural habitats, etc.

Measures: Traffic restrictions over weekends, during night hours or in sensitive areas; zoning laws and building codes; tax/subsidy-schemes to mobilise funds for preservation of cultural heritage.

Macroeconomic stability
Sectors: Financial institutions may engage in imprudent lending or design complex financial instruments that are insufficiently understood. As a consequence, depositors may lose confidence and withdraw their money, inter-bank lending may suffer, credit supply to the real economy be hampered, and so forth.

Measures: To ensure stability, financial institutions must comply with measures such as minimum capital requirements; higher capital reserves when new financial instruments are provided; diversify assets to limit exposure to individual clients; report on their activities; or put limits on remuneration of management.

Avoidance of market dominance and anti-competitive conduct
Sectors: Concerns about anti-competitive conduct arise in sectors prone to market concentration (including services with network effects and interconnection needs (transport, telecom), and liberalised former monopolies).

Measures: Limitations on market shares, introduction of price surveillance or mandatory price caps, interconnection guarantees, government-mandat-

23 'Disciplines on Domestic Regulation pursuant to GATS Article VI.4, Background and Current State of Play', prepared by WTO Trade in Services Division, June 2011

ed technical standards to replace company-specific requirements.

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