



Toolkit for
**Regulatory Assessment on
Services Trade and
Investment (RASTI)**

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TRADE IN SERVICES: INPUTS FOR DEVELOPMENT

- Why it matters?

- Services are a key component of competitiveness
- As inputs to other economic activities services are a critical determinant of trade
- Services have become source of export diversification

TRADE IN SERVICES: INPUTS FOR DEVELOPMENT

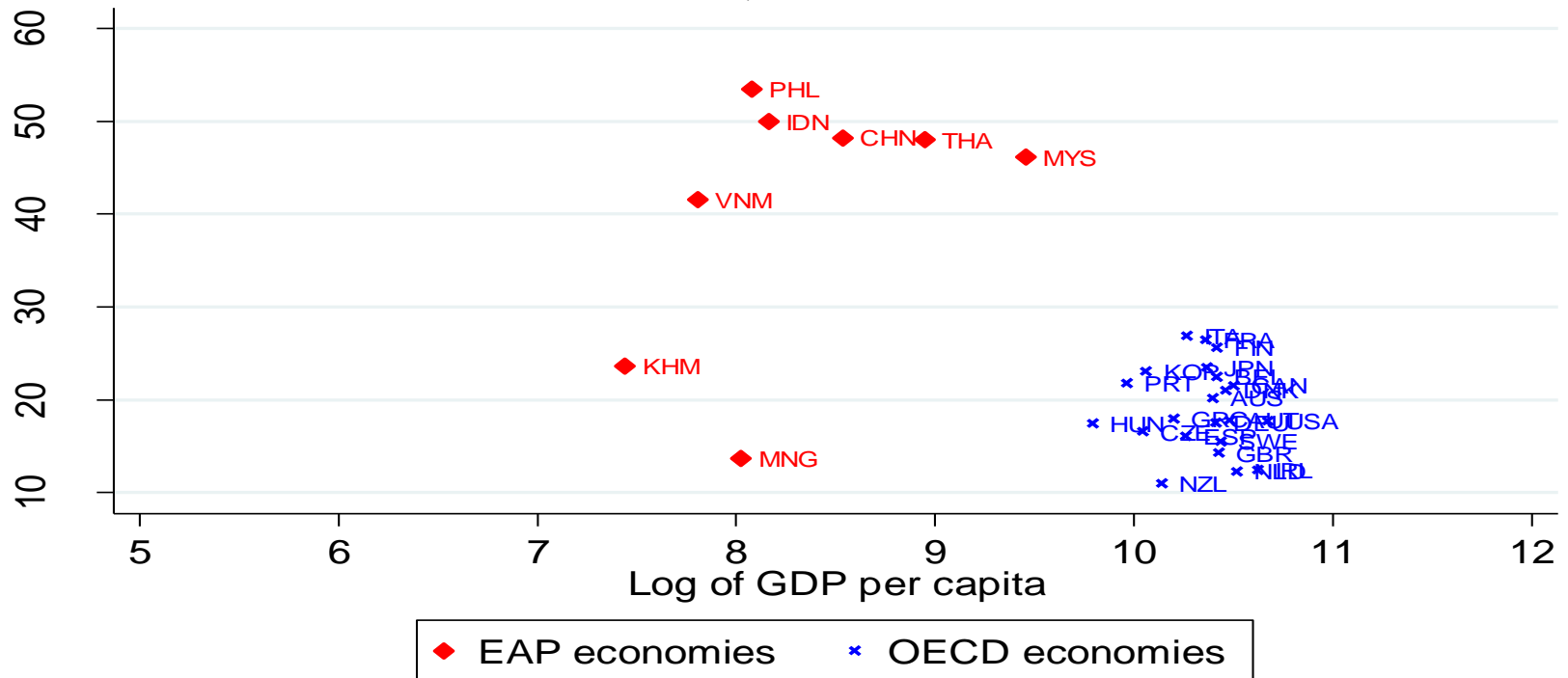
- What we are doing?
 - Services trade policy is about domestic regulation
 - Liberalization has focused on prima facie restrictions
 - Need to focus deeper on regulations and governance
- How we are doing it?
 - Regulatory Assessment Toolkit: methodology to map, to assess impact, and to propose alternatives

WHY A REGULATORY ASSESSMENT IN SERVICES TRADE?

- Laws and regulations are the main instrument for regulation international trade in services
- Regulatory governance (decision-making, application and enforcement) as important as regulation itself.

RESTRICTIVENESS AND GOVERNANCE

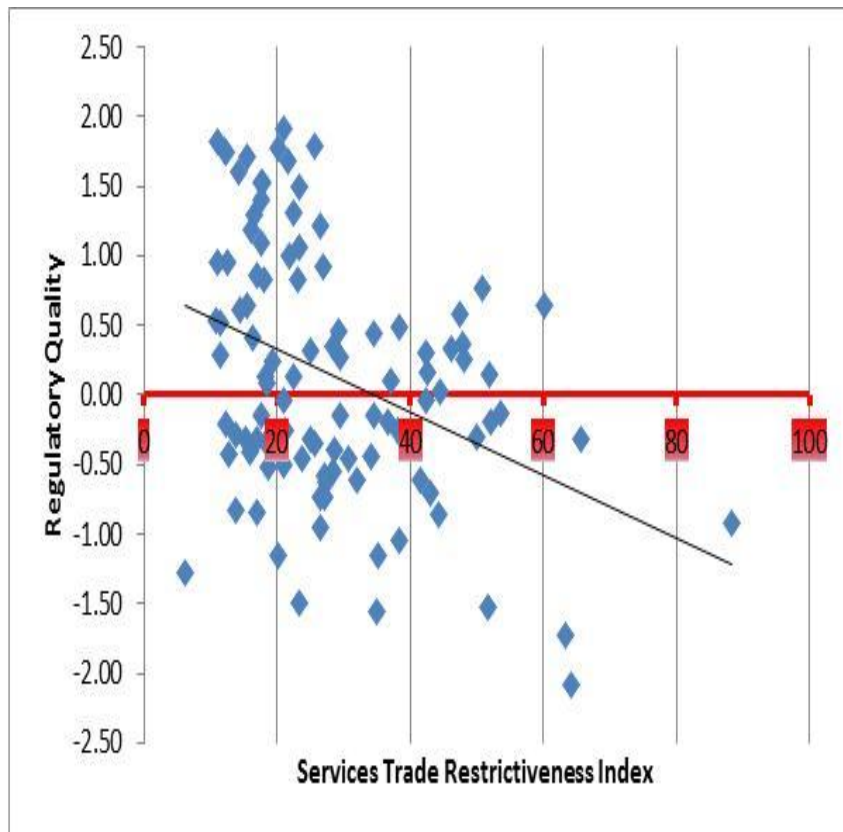
Services Trade Openness
Thailand, EAP and OECD



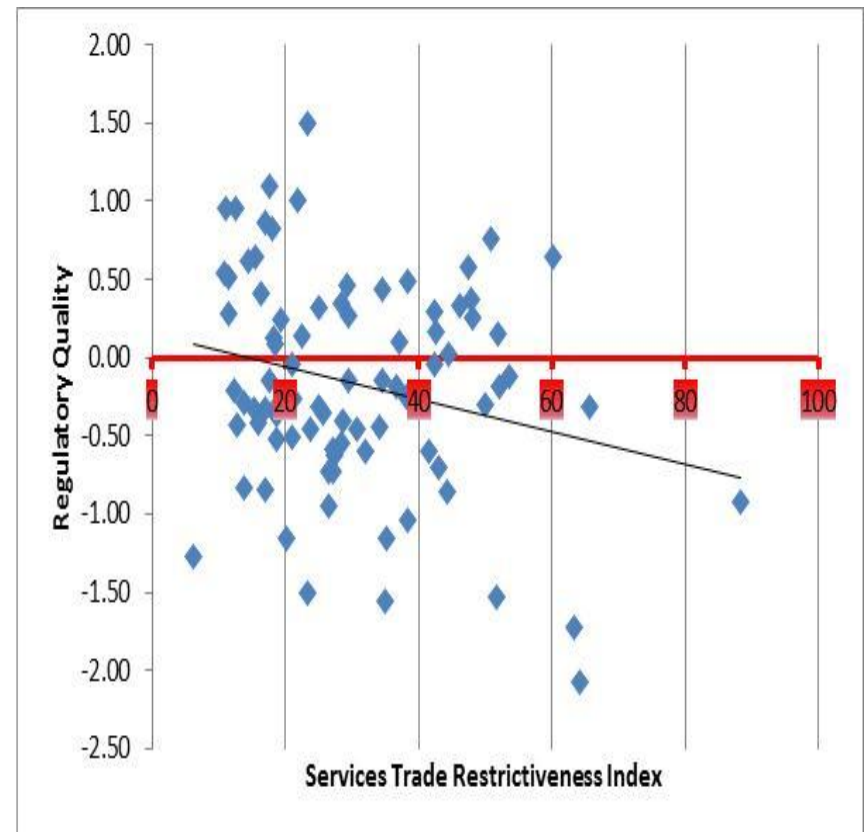
Source: Borchert, Gootiiz and Mattoo, "Policy Barriers To International Trade in Services: New Empirical Evidence", World Bank: forthcoming.
 Note: GDP per capita taken from WDI, 2007 PPP data in constant 2005 international US\$

RESTRICTIVENESS AND REGULATORY GOVERNANCE

All Countries in the Sample

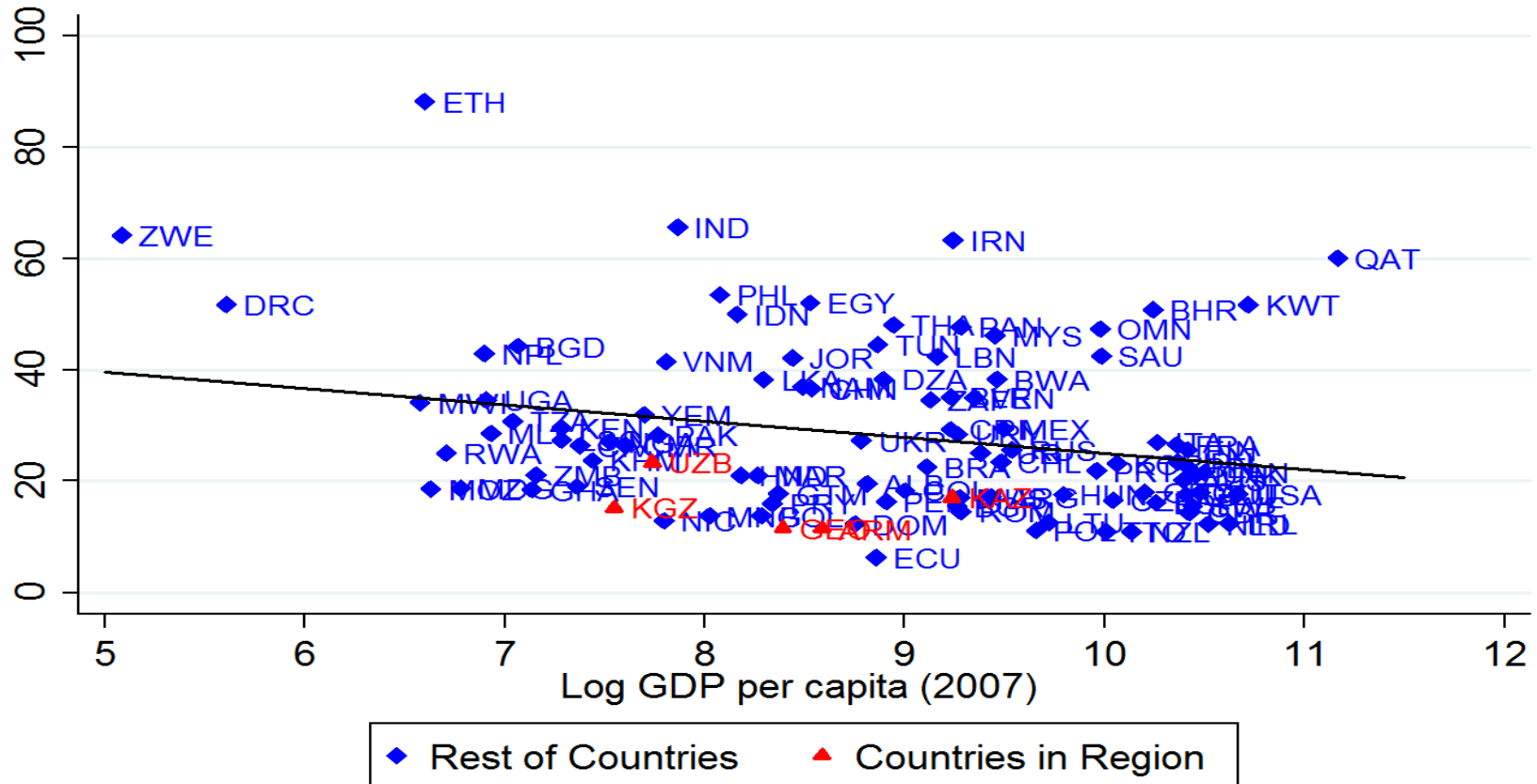


Developing Countries



RESTRICTIVENESS AND GOVERNANCE

Services Trade Restrictiveness



Data source: Borchert, Gootiiz and Mattoo, "Policy Barriers To International Trade in Services: New Empirical Evidence", World Bank forthcoming.

RASTI BASICS

- Identify trade-related measures at different levels of regulation
 - Different levels of analysis serve different purposes
- Assess measures based on regulatory principles and economic impact
- Identify and propose measures and regulatory policies less trade-restrictive, while fulfilling same (legitimate) policy goals

Step 1

- Mapping regulations
 - Horizontal regulations affecting a wide range of sectors
 - Specific regulations affecting a sector, subsector, or an activity
- Assessing regulation-making process: transparency, necessity, and non-discrimination
- Assessing institutional arrangements in light of international best practices

Step 2

- Assessing the impact of regulations on market structure, prices, quality, and access

Step 3

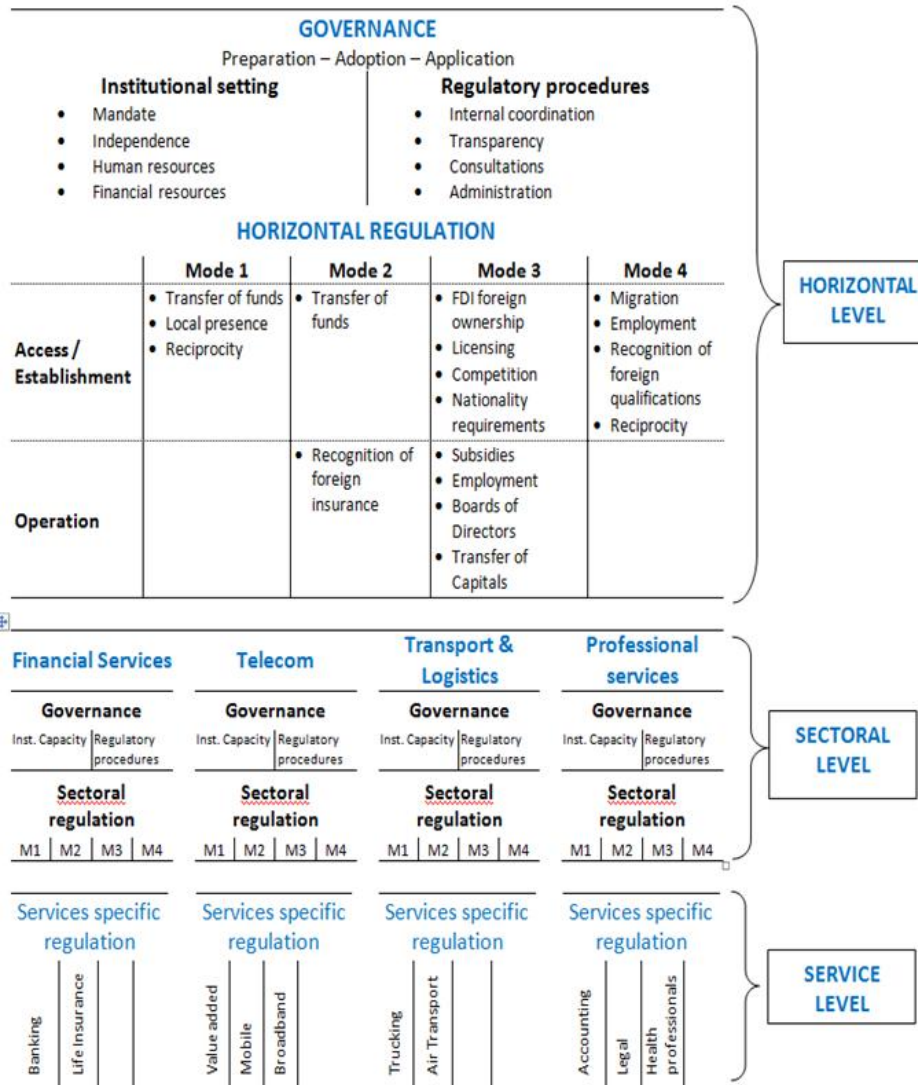
- Assessing alternative regulations
- Proposing new institutional arrangements, if any
- Assessing feasibility of alternative regulations and institutional arrangements

CONCEPTUAL FRAMEWORK

REGULATORY GOALS AND CHALLENGES

- Rationales for regulation
 - Economic: market failures
 - Monopolies / externalities / information asymmetry / coordination
 - Non-economic: “public interest”, “public morals”, “*ordre publique*”
 - distributional justice / community values / individual well-being.
- Challenges: regulatory failure
 - Capture
 - Bounded rationality
 - e.g. lack of regulatory capacity, information asymmetry
- How to determine what is “good regulation”
 - Evaluate the regulatory process
 - +
 - Assess (trade) impact --wherever possible

Levels of regulatory mapping



- Focus on both regulation and governance
- ...and different modes of supply
- Capture formal measures and de facto practice that imply restrictions to trade and investment in services

Regulatory mapping: parameters for classifying measures

Sectoral Level	Modes of supply affected
Horizontal	<ol style="list-style-type: none"> 1. Cross-border trade 2. Consumption abroad 3. Establishment 4. Presence of individual services supplier
Sectoral	
Service	
Stage of the supply affected	Nature of the Measure
Access / Establishment	Quantitative
Operation	Qualitative
Origin of the measure	Impact
Legal or regulatory instrument	Formally discriminatory
Administrative practices	De facto discriminatory
	Discriminatory application
	Non-discriminatory
Purpose of the regulation	
Market failures	Non-economic Policies
<ul style="list-style-type: none"> • Monopoly / competition • Public goods • Externalities • Information asymmetries • Coordination deficits 	<ul style="list-style-type: none"> • Distributional justice • Regulatory failure • Public interest

Source: authors

Mapping methodology

- Document sources:
 - Laws and regulations
 - Foreign investment, commercial enterprises, transfers of funds regime, entry and stay of people
 - International trade and investment agreements / WTO accessions
 - Basic trade and investment restrictions
 - Literature
- Interviews: directed at identifying measures and regulatory procedures that are impairing trade in services
 - government
 - Trade ministry, “Planning”, Econ, Telecoms, tourism, etc
 - private sector
 - Industry association, key domestic and foreign serv. providers, etc
 - questionnaires:
 - Governance: [click here](#)
 - Regulation: [click here](#)

Sample of issues and questions for Regulatory Mapping (1) – Regulatory Framework

		Issues	Sample questions
Legal and Regulatory Measures	Regarding market access and establishment	General	<ul style="list-style-type: none"> • Is private ownership of services companies allowed? • Are there any sectors subject to monopolies or exclusive services providers? • Does the State have participation in such monopolies?
		Land Ownership	<ul style="list-style-type: none"> • Are there restrictions on the private ownership of land? • Are there restrictions on the ownership of land by foreign individuals and companies, which are not applied to nationals? <ul style="list-style-type: none"> ○ If yes, can foreigners lease land? For how long?
		Economic Needs Test	<ul style="list-style-type: none"> • Is private investment subject to economic needs tests? • Do ENTs apply to all private investments, or only to foreign ones? Is that set out in the law/regulation, or as result of usual practice? • What are the requirements of the economic needs test? Are they spelled out in a legal instrument?
	Regarding operations	Regulatory Restrictions	<ul style="list-style-type: none"> • Are there restrictions for the advertisement of services? <ul style="list-style-type: none"> ○ If yes, do they apply to foreign services providers just like to domestic ones? • Is there a regime for performance requirements that applies to services providers? • Are the performance requirements the same for foreign services providers as for domestic ones?
		Measures regarding movement of people	<ul style="list-style-type: none"> • Are there quotas for foreign employees? • Are there economic needs test on the employment of foreign personnel? • Are labor certifications tests required for intra-corporate transferees or professionals? • Has the country concluded and implemented Mutual Recognition Agreements with other countries?
		Transparency and application of measures	<ul style="list-style-type: none"> • How would you describe the availability of laws and regulations to the public? • How are laws and regulations publicly available? • Are licensing and authorization procedures according to the publicly available rules? • Are there unofficial fees in the licensing procedures? • How would you describe the monitoring and enforcement procedures of regulation? • Are the enforcement and monitoring procedures applied even-handedly?
Administrative Practices			

Source: authors

Regulatory mapping: typology of measures

	Quantitative	Non-Quantitative
Market Access / Establishment	<ul style="list-style-type: none"> • Monopoly / exclusive service suppliers • Numerical restrictions • Zoning / Geographical restrictions • Limitations to foreign equity • Economic Needs Tests • Authorization / permit (non-qualified) 	<ul style="list-style-type: none"> • Licensing on <ul style="list-style-type: none"> ○ Qualifications / Education ○ Experience ○ Technical capacity • Nationality / residency of services • Residency • Track record requirements • Requirement to subscribe to association • Approval of mergers and acquisitions • Form of establishment • Prohibition • Minimum capital requirements
Operation	<ul style="list-style-type: none"> • Numerical restrictions on <ul style="list-style-type: none"> ○ transaction ○ operations / output ○ employees ○ repatriation of funds ○ duration of license / divestment ○ hours of operations • Screen / performance quotas • Performance requirements 	<ul style="list-style-type: none"> • Nationality / residency of managers, boards of directors • Land Ownership • Discriminatory Taxation • Access to Subsidies • Knowledge Transfer • Advertising limitations • Rules on anti-competitive behavior • Limitations on distribution channels • Limitations on pricing • Limitations on transfer of funds • Type of shares owned by foreigners • Performance requirements • Import permits • Access to government contracts

Source: authors

Regulatory mapping: sample mapping table

Table 1. Excerpts of Regulatory Mapping of the Kingdom of Uqbar.

Measures affecting trade in services	Sectors Covered	Modes of Supply	Stage affected	Nature of the measure	Origin	Impact	Regulatory goals		Remarks
							Market Failure	Non-economic policies	
Restrictions on the access, use of land of the indigenous small peoples and exiguous ethnic communities may be established.	Horizontal	Mode 3 Mode 4	Entry / Market Access	Qualitative	Legal (Law on Protection of Native Peoples)	Non-discriminatory	--	Protection of minorities	
Access to subsidies and State support reserved to Uqbar nationals.	Horizontal	All Modes	Operation	Qualitative	Legal	Discriminatory	--	Subsidies	
Acquisitions of Uqbarian businesses of Uq\$ 5M or more by foreigners subject to review by the National Board of Investment	Horizontal	Mode 3	Entry / Market Access	Qualitative (ENT)	Legal (Law o Foreign Investment)	Discriminatory	--	National security	
Only individuals resident in Uqbar, enterprises having their head offices in Uqbar or branch offices in Uqbar may apply for and be issued import permits	Horizontal - Distribution services	Mode 1 Mode 3	Market Access / Operation	Qualitative	Legal (Law on Export and Import permits)	De facto discriminatory	--	Crime (contraband) prevention	Possible alternative: Information requirement
Accountantss must have been domiciled continuously in Uqbar for at least three years and demonstrate accounting experience in Uqbar for at least one year.	Accounting Services	All modes	Market Access	Qualitative	Legal (Law on Accountants)	De facto discriminatory	Information asymmetry	--	Possible alternative: Examination requirements
Foreign lawyers not allowed to register at Uqbar National Bar	Legal Services	Mode 2 Mode 4	Market Access	Qualitative	Regulatory (Directive by the Uqbar National Bar)	Discriminatory	Information asymmetry	Protection domestic providers	Allow registration for international law only
Selective enforcement of sanitary regulations	Tourism services	Mode 3	Operation	Qualitative	Practice (Ministry of Tourism)	Discriminatory	--	--	
Limited licenses to foreign banks	Banking services	Mode 3	Market Access	Quantitative	Practice (Central Bank)	Discriminatory	--	Protection small domestic banks	Subsidies to small financial institutions

Source: authors, based on and country reports, and commitments and reservations to international agreements.

Empirical impact assessment

- Module 2: review of empirical methods for assessing impact of regulation
 - Pros / cons, alternatives
 - Also, practical guidance, data sources and availability
- Quantitative methods
 - Direct methods: collecting regulatory information + econometrics
 - Steps:
 - 1) data collection,
 - 2) scoring, classifying, building index,
 - 3) estimating impact (price, cost, price-cost margin, etc),
 - 4) construct impact measures (tariff equivalent)
 - Pros: impact can be directly linked to particular policies rather than being the result of an unexplained residual
 - Cons: information-intensive
 - Examples Australia Productivity Commission, STRI, OECD, RASTI
 - Indirect methods: gravity, mark-ups, CGE
 - Pros: measuring impact + prediction of impact of barriers reduction
 - Cons: causality of policy and regulatory measures is only inferred, thus limiting the value for policy recommendations.
- **Critically depends on data availability.**

Regulatory alternatives

- Case-by-case analysis
- Quantitative + qualitative assessment depending on data
- Relevant Factors include
 - Governance framework
 - Types of restrictions to trade in services (impact, nature, etc)
- Alternatives may relate to regulatory policies or regulatory measures
- Regulatory policies
 - Command & control (mandatory regulation)
 - Incentives (as a regulatory tool)
 - Market control (competition policy, contract-based regulation, concessions)
 - Disclosure regulation
 - Self regulation
- Regulatory measures
 - Types of requirements
 - specification vs. performance vs target
 - Eliminate barriers
 - Streamline procedures

Alternatives for regulatory policies

Regulatory strategies: strengths and weaknesses

Strategy	Example	Strengths	Weaknesses
1. Command and Control	Safety regulation in transport sector	<ul style="list-style-type: none"> Force of law. Fixed standards set minimum acceptable levels of behavior. Screens entry. Seen as highly protective of social interests. Use of penalties indicates forceful stance by authorities 	<ul style="list-style-type: none"> Intrusive in management decisions. Prone to capture. Complex rules tend to multiply. Inflexible. Severe informational requirements. Expensive to administer and enforce. Standard-setting requires strong institutional capacity. Can disguise restrictions to trade and limitations to competition. High compliance costs for firms. May inhibit innovation.
2. Incentives	Tax breaks for R&D costs.	<ul style="list-style-type: none"> Low regulator discretion. Low-cost application. Low intervention in management. Incentive to reduce harm to zero, not just to standard. Economic pressure to behave acceptably. 	<ul style="list-style-type: none"> Rules are required. Poor response to problems arising from irrational or careless behavior. Predicting outcome from given incentive difficult. Mechanical, so inflexible. Regulatory lag. Politically contentious as it fails to prohibit offenses. Revenue loss.
3. Market Harnessing controls		<ul style="list-style-type: none"> Responses to markets driven by firms, not bureaucracy. 	<ul style="list-style-type: none"> No regulatory body to address technical or commercial problems in the industry.
a. competition policy	Retail distribution services.	<ul style="list-style-type: none"> Can be applied across industries. Economies of scale in use of general rules. Low level of intervention. Flexibility for firms. 	<ul style="list-style-type: none"> Uncertainty and transactions costs. Strong competition authority necessary. Courts slow to generate guidance. Principles only develop as policy is put into practice.
b. concessions	Port / airport administration	<ul style="list-style-type: none"> Enforcement is low cost to public. Low level of restriction. Respects managerial freedom. Allows competition for market as substitute for competition in market. Businesses rather than government bodies respond to market preferences. 	<ul style="list-style-type: none"> Evidential difficulties. Only applicable to specific services. Tension of specification and responsiveness / innovation. Uncertainties impose cost on consumers. Requires multiple bidders interested in the markets. Non-transparent bidding procedures leave large space for corruption. Need to enforce terms of franchise
c. contracts	Street cleaning services	<ul style="list-style-type: none"> Combines control with services provision Sanctioning by economic incentive or non-renewal. Easier to operate than licensing and concessions. 	<ul style="list-style-type: none"> Potential confusion of regulatory and services role. Limited to selected services. Poor transparency and accountability,
4. Information disclosure	Mandatory disclosure in insurance services	<ul style="list-style-type: none"> Low intervention. Leaves market decisions to consumers. Lower danger of capture. 	<ul style="list-style-type: none"> Requires high degree of understanding from consumers. Only useful in low-risk sectors. Economic incentives (e.g. low price) prevail over information (i.e. risk) Costs of disclosure may be high. Policing on information quality and fraud required.
5. Direct action and design			
a. direct intervention	State-build facilities (infrastructure)	<ul style="list-style-type: none"> Can separate between infrastructure provision from operation. Assures acceptable level of provision. Useful where smalls firms in poor position to behave responsibly. Allows State to plan long-term investment 	<ul style="list-style-type: none"> Fairness of subsidies may be contentious. Funding costly. Heavy public sector involvement. Innovation may not be market driven.
b. Nudge		<ul style="list-style-type: none"> Low cost. Combines influence with residual freedom of choice. 	<ul style="list-style-type: none"> May not work where decision process are complex or are other influenced by other incentives (e.g. prices). Low transparency and accountability. Only suitable for low risks scenarios.
6. Rights and liabilities	Rules of tort law. Individual rights.	<ul style="list-style-type: none"> Self-help. Low intervention. Low cost to State. 	<ul style="list-style-type: none"> May not prevent undesired effects. Individual may not enforce due to costs. Evidential difficulties and legal uncertainties reduce enforcement. Insurance may temper deterrent effects.

Source: Baldwin et al. 2012

International Trade Department

PREM
POVERTY REDUCTION AND ECONOMIC MANAGEMENT

THE WORLD BANK

Alternatives for regulatory measures

Common regulatory measures and possible less-restrictive alternatives

Regulatory measure	Rationale	Problem	Alternative policy approach
Grant of exclusive right	Natural monopoly, or need to ensure a large, strategic investment occurs, or meet specific socio-economic political objectives e.g., universal services, access to poorer segments of society.	Natural monopoly must be carefully defined – in what specific part of the market does it exist? Is it durable, or likely to be eliminated over time by technology or other changes? Regulating monopoly is difficult. Is the cost of regulating monopoly greater than the hoped for gain?	Careful allocation of monopoly right, involving: <ul style="list-style-type: none"> • Limiting its scope • Limiting its duration • Auctioning the monopoly right • Repeating the auction periodically. Consider alternative means of promoting investment? Considering other more direct ways to help target groups, sectors and regions. Break up monopoly and encourage competition in areas not characterized by natural monopoly (such as electricity generation and distribution) and focus regulation on the core natural monopoly (e.g. electricity transmission)
Establishment of license or permit system	To address identified risks, market failure or achieve other public interest objectives, such as achieving equity, environmental resource use aims.	Licenses can unnecessarily restrict entry into a market and may inhibit healthy competition. Licenses may also be manipulated to restrict entry, following lobbying from incumbents, encourage corruption and be difficult and costly to administer.	Review license to ensure that the benefits of regulation exceed the costs. Consider alternatives to licenses, such as on relying on existing regulations, fiscal instruments, information campaigns, market-based instruments, products liability laws or quasi-regulation (such as industry codes of conduct). Where licenses and permits are used, explore scope to minimize their anti-competitive impacts.
Limits on ability of suppliers to provide a good or service	Often a deliberate attempt in procurement policies to favor local (regional) business, or to favor small business or to promote domestic enterprise/ import substitution.	Such policies are generally protectionist. Cost to procurers is high. Other means of favoring particular groups likely to be more effective and transparent.	Careful consideration needed of the policy merits of favoring particular groups. If warranted, consider subsidies or vouchers or targeted removal of unwarranted impediments (regulatory or otherwise) to participation.
Raising the cost of entry or exit	Often a consumer protection rationale, with raised entry costs due to increased product testing requirements, financial capacity (including insurance) requirements, etc.	Policies particularly disadvantage new entrants, protecting incumbents and reducing innovation & dynamism in the market. Many provisions actually produce relatively limited consumer benefits.	Assess extent of consumer problems/potential harms and size of benefits due to these interventions. Keep requirements to a minimum level. Consider consumer education provisions as an alternative.
Restricting the flow of goods, services, capital or labor across borders	Often a tool of regional policy, attempting to enhance the viability of regional economies, increase employment, etc.	Artificially reduces the size of the market. Often significant efficiency costs are created by excluding potentially larger and efficient groups of alternative suppliers. Invites retaliatory action from other governments – a “negative sum” game.	Other regional policy tools include provision of subsidies, targeted investments by government, enhancing infrastructure, etc.
Controls on prices of goods or services	Maximum prices often a corollary of entry restrictions. Minimum prices sometimes a response to concerns over “predatory pricing” where price competition has been fierce.	Normal market disciplines are defeated, protecting inefficient producers. Consumers suffer higher prices. Even maximum prices may tend to increase average prices by serving as a price signal.	General competition law can deal with predatory pricing, which is in any case rare. Where entry restrictions lead to monopoly power, a better solution is often to remove these restrictions. There are virtually no cases in which regulation of prices is a “first best” solution.
Restrictions on advertising	Often intended to prevent false/misleading advertising or to discourage “over-consumption” where this can result in negative impacts on consumers, or some profession’s view advertising as de-meaning or creating barriers to entry.	Restricting advertising limits consumer information and makes markets less efficient. It is usually ineffective as a means of limiting consumption or choice, or limiting entry.	Rely on general competition law to prevent “false and misleading” advertising.
Setting product standards at high levels	Standards may be set above levels informed consumers would choose to minimize political risks or provide a level of protection considered desirable at the political or broader community level.	Setting high standards limits consumer choice, especially ability to choose low price/low quality options. Likely to be a particular problem for poorer consumers.	Competition laws allow for cooperation in setting standards if not used to unduly limit competition; emphasis should be placed on performance vs. technical standards.

Source: World Bank 2010b, adapted from OECD 2007



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Thanks!