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# CARRYING OUT A REGULATORY AUDIT OF MEASURES AFFECTING TRADE IN SERVICES

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# I. Introduction and Objectives

Regulations are the heart of services. Both the type of regulation and the way it is applied determine competitiveness of firms and of countries on international markets. Because regulations are so critical in the services area, it is vital for governments to have a very good grasp on exactly what regulations are in place in their domestic economies. This can only be done through putting together a comprehensive and exhaustive inventory of measures of services regulations with particular focus on those that affect services trade. Due to its vital nature, this paper is devoted to a discussion of how such an inventory of measures can be constructed by the governments of AU Member States.

This paper presents options for choosing a template for carrying out a regulatory audit and discusses how to go about a subsequent regulatory impact review. Before examining the various options available for these exercises, the paper first looks at the interface between services regulation and trade and discusses how to examine the restrictiveness of services regulations affecting trade as well as the relationship between services regulations and level of development. The paper then proceeds to look at the reasons for developing an inventory of services regulations at the national level, both for economy-wide measures as well as sectoral measures. Such an inventory is an essential tool for both trade officials and national regulators in determining an appropriate set of policies for the national economy and also for engaging in trade negotiations. Once an inventory of measures exists, this information can serve as the basis for carrying out a national regulatory audit. The rationale for this undertaking is compelling. Specifically, to ensure that regulations are appropriate to purpose and fulfill a legitimate function, while being the least trade restrictive possible.

This paper is a companion to a paper on services regulations, also prepared under Pillar I of the *Services Development Programme*, namely *Principles and Best Practices for Domestic Regulation of Services (December 2016)*, which focuses on the development of principles and best practices for domestic regulation of services. Such principles can provide the foundation and guidelines for the application of a regulatory impact assessment once the necessary information on the measures affecting services trade is available in the chosen template format. Both papers should be read and made use of in a complementary manner.

Putting together an inventory of measures affecting services trade is an indispensable tool for all governments, both for the improvement of domestic economic efficiency and for engaging in international trade with a full understanding of the regulatory panorama in the national economy. Such an inventory of measures must be constructed on the basis of an agreed format, or template. This paper carries out a gap analysis of four existing templates in the services area that could be used for the purpose of constructing an inventory of services measures by AU Member States. In order for an inventory of measures affecting services trade to be assembled, it is essential to select a template that will be used as the basis for the collection of information on all measures affecting services trade, both on an economy-wide and a sector-specific basis. Selecting an appropriate template for the regulatory audit can facilitate this undertaking. The pros and cons for each of the four template profiles presented are discussed, and a recommendation is made for the template that might be the most appropriate in the AU context. The template chosen should ideally be the same for all AU Members so as to facilitate the CFTA services negotiations.

The paper also discusses the function of a regulatory audit or regulatory impact assessment and why it is important to conduct this once the relevant information on measures affecting services trade has been collected in an inventory. Carrying out a regulatory impact assessment can assist policy makers in AU Member States in evaluating the effectiveness of regulatory interventions in their national economies based on stated rationale and development objectives for each service sector so as to ascertain the appropriateness of existing measures and whether regulatory reform may be needed. A regulatory audit should result in a more efficient, less trade restrictive and more development-

appropriate set of domestic regulations. Such a regulatory audit should be carried out through the examination of measures collected according to a commonly agreed template and based upon application of the general regulatory principles developed in the companion paper referenced above.

The objectives of this paper are the following:

- to explain the interface between domestic regulation of services and its impact on international trade;
- to help government officials and regulators in AU Member States understand why it is important to develop an economy-wide inventory of regulatory measures affecting services trade and how this can be useful;
- to evaluate existing templates for the collection of such information on services regulations and to propose a template that would be suitable for the African context;
- to discuss how to use the information collected in an inventory of services measures can serve as the basis for carrying out a regulatory impact assessment at the national level and to understand why such a regulatory audit is important; and
- to illustrate how the appropriateness of services regulations can be assessed so as to ensure their proper and legitimate use, with a suggestion for adapting a regulatory impact assessment process to the African context.

## II. Interface between Domestic Regulation and Services Trade

Services regulation, while essential for many different reasons (as discussed in the companion paper on *Principles and Best Practices for Domestic Regulation of Services (December 2016)*), can often have secondary consequences that serve to restrict trade. Even if the stated policy objective is for other purposes, behind-the-border regulations on services may either hide protectionist intentions, or if incorrectly applied, may negatively impact market access or national treatment for foreign service providers. This may occur either *de jure* or *de facto*, depending upon the measure in question. If a regulation is designed to serve a legitimate purpose, but is applied in an incorrect manner or is more stringent than needed to achieve the objective in question, then it can be counterproductive and also impact negatively on trade flows.

There is a strong interface between regulation affecting services and a potential restrictive impact on trade flows. The WTO General Agreement on Trade in Services (GATS) sets out in Article XVI a

### BOX 1: MEASURES THAT CONSTITUTE MARKET ACCESS BARRIERS UNDER THE WTO GATS

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign

finite list of six different types of market access restrictions that countries can schedule as limitations in their Services Schedules of Commitments, which are set out in Box 1. These market access restrictions are almost all of a quantitative nature and limit various types of services suppliers, transactions, output, and participation of foreign capital and/or number of persons employed. The exception to this among the list is the requirement of a specific type of legal entity or joint venture that can be imposed on foreign investors.

In contrast, the number of measures that can have a discriminatory impact on national treatment is virtually unlimited, and there is no associated list. In practice, any measure that is not a market access restriction and that contains an element of discrimination that affects a foreign services provider can fall under the national treatment category. The GATS defines this in Article XVII as any measure affecting the supply of a service that provides “...*treatment no less favourable than that it accords to its own like services and service suppliers.*” These measures can include, among others: discriminatory taxes or subsidies (in favor of local firms); restrictions that prevent foreign firms from certain types of land



use or entering into certain types of service activities; residency or national requirements in order to provide a service to the domestic market; or preferences given to domestic firms or service providers in various types of ways (such as through procurement decisions or allocation of band width for transmissions, or smaller number of cinema hours allowed for foreign films, etc.).

As previously mentioned, while some regulations may be “neutral” in appearance, in practice they may carry with them restrictive effects. This is the difference between ‘*de jure*’ measures that are clear and explicit and easily known to firms, and ‘*de facto*’ measures whose impact is created on the service supplier through the way it affects his/her ability to provide the service. For example, all residency, citizenship and language requirements are neutral on face value. But in practice, they may prevent foreign firms from providing the service if they are unable to set up a business in the country, become a citizen (a difficult process in most places) and master the language. Measures with a ‘*de facto*’ protectionist impact also include many others such as: qualification and licensing requirements and procedures that are lengthy, complex, and nontransparent; technical standards for services that differ in stringency between countries; lack of objective and transparent authorization criteria for the granting of licenses and accreditation; rules that dictate the hours and location of retail firms, as well as prices, fees and regulations on personnel. These can also encompass situations where there is no clear regulation in effect, and thus the absence of a regulation affects the ability of a foreign firm to provide a service (for example, regulations on access and connection to existing infrastructure in the case of network industries). It is interesting to note that some authors include public service obligations for quality and social policy objectives (as discussed above) among those domestic regulations that can negatively impact a foreign services provider and services trade.

Non-discriminatory domestic regulations affect all firms, foreign and domestic. These are more challenging for policy officials, as their potential restrictive impact can only be properly evaluated through the use of a regulatory impact assessment tool, which is considered later in this paper. These measures are ‘captured’ under the WTO GATS in Article VI.4 on Domestic Regulation that attempted to set out disciplines so that such domestic regulation measures do not create restrictive trade impacts.

*“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.” GATS Article VI.4*

However, finalization of the GATS disciplines on domestic regulation remained part of the unfinished business of the Uruguay Round, and despite much discussion and negotiation since that time, it has not proved possible to agree upon these expanded disciplines and to make the ‘necessity’ test a permanent part of the GATS. There has been no consensus that deeper horizontal disciplines on regulation would be desirable, given the diversity of regulatory practices and the sensitivity surrounding the perceived encroachment of the WTO and other trade agreements on national regulatory authority. The question of how to define ‘burdensome’ seems to be very much an individual perception. A revival of the effort to finalize and expand GATS disciplines on domestic regulation is currently underway (early 2017) in the WTO, as an effort to reach a ‘deliverable’ for the 11<sup>th</sup> WTO Ministerial Conference, scheduled for December 2017.

Most services trade agreements have simply reproduced the GATS text, though several have gone beyond the WTO to require that domestic regulation disciplines be applied to all services across the board and not just to those services included in schedules of commitments, which is currently the case under the GATS.

Box 2 captures in a schematic manner the various ways in which regulatory measures can impact foreign service providers: directly through market access; directly (*'de jure'*) through overt discrimination on foreign firms; indirectly (*'de facto'*) through domestic regulations that can have a restrictive impact on the ability of the foreign firm to provide the service. The indirect restrictive impacts of service regulation can only be evaluated through the application of a regulatory impact analysis tool. Such regulations are also often strongly defended by local firms who have a vested interest in maintaining them in place.

**BOX 2: WAYS IN WHICH REGULATORY MEASURES CAN NEGATIVELY AFFECT TRADE FLOWS**

<b>Directly</b>	<b>Indirectly</b>
<ul style="list-style-type: none"> <li>• Quantitative restrictions on entry of foreign service firms into domestic markets (market access)</li> <li>• Overt discrimination against foreign firms in carrying out services activities (<i>'De jure'</i> discrimination)</li> </ul>	<ul style="list-style-type: none"> <li>• <i>De facto</i> discrimination against foreign firms even when measure is applied across board (exp: residency / nationality requirements)</li> <li>• Indirect discrimination through regulations that do not single out foreign firms but that have a restrictive impact on trade</li> </ul>

It is also useful to think of restrictions on services trade according to the way they affect the four modes of service supply that have been codified in the WTO GATS and other services trade agreements. Various regulatory measures can constitute trade restrictions on each mode of supply. Examples of restrictive types of regulation that can affect the four modes of service supply are set out as illustrations in Table 1. It should be noted that when there is a sole supplier of the service (for example a government provided monopoly as has often been the case in the past) and other service providers (both domestic and foreign) are not allowed to offer this service, then this restriction will affect all four modes of service supply.

Restrictive barriers that affect the cross-border supply of services (mode 1) now include the increasingly prevalent requirement to hold data in servers located within the national jurisdiction, or to require that certain types of data not be held abroad. The line between a measure designed to promote local ICT firms (which is an infant industry type of protectionist measure) and the desire to protect privacy of consumer data (which is a legitimate objective) can be a sensitive one. Any measure that requires a foreign firm to have a local commercial presence in order to supply a service rather than being able to do this electronically across borders constitutes a restriction to cross border trade. These types of measure are particularly harmful to small firms in developing countries who have less capital to invest abroad than firms from advanced countries.

Restrictive measures on mode 2, or consumption of services abroad, include the imposition of stringent visa requirements for students wishing to study in-country (which would constitute the export of education services) or higher tuition for such students. Restrictions to limit the transfer of capital, payments, or use of credit cards (subject to authorization) when consumers travel to consume services abroad (such as medical services or recreational services) would also restrict this mode of services trade, as well as any type of two-tiered pricing structure for tourism services offered in-country.

TABLE I: EXAMPLES OF REGULATORY RESTRICTIONS ON SERVICES TRADE

Services Modes of Delivery	Types of Possible Regulatory Restrictions
<b>Mode 1 : Cross Border Trade</b>	Localization requirements for data and/or for servers; Taxes on electronic commerce trade; Local registration or local agent requirement; Local presence requirement to supply service; License required to supply service
<b>Mode 2 : Consumption Abroad</b>	Restrictive visa requirements for foreign students wishing to study in-country or higher tuition for such students; Exchange controls on nationals who wish to travel abroad; Discriminatory taxes on foreign firms who operate in-country to carry out repairs on machinery, aircraft or other types of equipment; Higher fees for foreign tourists to visit national tourism sites; Exchange controls on transfer of capital, payments or use of credit cards for payment of services transactions
<b>Mode 3 : Commercial Presence (foreign direct investment)</b>	Restricted sectors for foreign investors; Limitation on amount of equity holding allowed in new or existing service activities; Restrictions on establishment of new businesses; Higher taxes for foreign investors than for nationals or different types of reporting requirements; Limitations on personnel that investors can bring in-country for their activities; Limitations on the number and/or type of joint ventures allowed; Limitations on number or location of branches of foreign firms
<b>Mode 4 : Movement of Natural Persons</b>	Application of labor market tests; Specific categories of labor allowed and/ or subject to approval; Application of economic needs tests to various labor categories such as specialists (often without clear criteria); Limitations on number of intra-corporate transferees permitted to accompany foreign investment or on self-employed persons (independent service providers) Higher taxes

Foreign direct investment in services (or mode 3, commercial presence) has traditionally been the mode of supply associated with the most numerous restrictions, at least in terms of those listed in the schedules of services commitments. These include limitations on the amount of foreign equity ownership a firm may have in a local services activity (often less than 100 percent) or restrictions on new businesses, as well as limits on the number of activities associated with the investment or on the geographic location or value of output. Many developing countries are sensitive about their investment policy space and have kept several sectors on a ‘reserved’ list, for investment only by nationals or permanent residents. This type of restriction, as well as other limitations on foreign investment in services, reduces the potential amount of technology transfer and skills that can be acquired through services trade.

Restrictions on the movement of natural persons (mode 4), the last form of services trade, affect the ability of people (usually skilled workers) to move temporarily from one country to another to provide services for remuneration. These various types of restrictions include the specification of only limited types of labor categories allowed for temporary employment, often subject to economic needs tests as well as labor market tests. They can also include a fixed limitation imposed on the number of

workers that are allowed in each of the skilled categories. When self-employed or independent service suppliers are not allowed among these categories it can have a particularly strong impact on service trade from developing countries, whose labor force is not always employed as part of large multinational corporations and thus has a harder time working abroad in the category of intra-corporate transferees.

# III. Examining the Trade Impact of Restrictive Services Regulation

Restrictive services regulations such as those discussed above can have tremendously large impacts on national economies. GATS Articles XVI or XVII give a broad degree of flexibility to WTO Members to include sectors and sub-sectors by choice in national schedules and to schedule or not schedule limitations (restrictions) on these sectors. Many lesser developed countries (LDCs) and lower income countries (LICs) have not entered into services trade agreements other than those that have a modality for scheduling services commitments similar to the WTO GATS (i.e. positive listing). Given the flexibility of the GATS approach in this regard, many developing countries do not have significant disciplines in place to limit government discretion for services regulation. The resulting degree of restriction in the services sector has thus remained much higher as a result than it has in the goods sector. In fact, trade costs in services sectors are calculated to be around twice the level for goods trade on average. These high costs in the services area result from regulation with restrictive impacts.

## A. SERVICES TRADE RESTRICTIVENESS DATABASES

The potential depth of services restrictions can be gauged by referring to the indices presented in the Services Trade Restrictiveness Index (STRI) databases constructed by The World Bank and the OECD.<sup>1</sup> These databases are valuable efforts by both organizations to help policy makers identify which measures restrict trade and to assess how strong a protectionist impact is imposed on services trade by these existing measures. The databases offer an overall value of restrictiveness by country and region, as well as a specific value of restrictiveness by sector. The STRI indices in both the World Bank and OECD databases are scored on values ranging from: 0 (completely open with no restrictions), 25 (with minor restrictions), 50 (with major restrictions), 75 (virtually closed but with limited opportunities to operate services), and 100 (completely closed to services trade). These indices are calculated on the basis of information in the databases that reports on regulation currently in force. Information on services measures in the World Bank database dates from 2007-2008, while the information in the OECD database has been recently updated in 2015 and 2016. The OECD STRI database also contains an interactive tool that allows the user to compare countries and to simulate the impacts of changes in regulatory policies.

While these two STRI databases target the same type of information, the country coverage of the databases, as well as that of the service sectors they encompass, is not the same, with implications for usefulness by AU Members. The World Bank database covers more countries but fewer sectors than does the OECD database. Many fewer developing countries and no least-developed countries are presently included in the OECD STRI database, so information for nearly all African countries would be found only in the World Bank STRI database. Only South Africa has been included in the OECD database.

Focusing on the information contained in the World Bank's STRI database would be helpful for many African governments in order to understand the degree of restrictiveness on trade imposed by

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<sup>1</sup> The World Bank, Development Economics Research Group, Services Trade Restrictions Database, <http://iresearch.worldbank.org/servicetrade/> OECD Trade and Agriculture Directorate, Services Trade Restrictiveness Index, at [www.oecd.org/tad/services-trade/services-trade-restrictiveness-index.htm](http://www.oecd.org/tad/services-trade/services-trade-restrictiveness-index.htm)

regulations within five major sectors (telecommunications, finance, transportation, retail and professional services), as well as under key modes of service supply (modes 1 and 3). The database contains qualitative policy information as well as a preliminary quantification of the restrictive impact of applied regulatory measures by country and by sector. Only about half (27) of the AU members are included in the World Bank's database at present.<sup>2</sup> A comparison of these two tools is set out in Table 2.

**TABLE 2: COMPARISON OF CONTENT OF WORLD BANK AND OECD SERVICES TRADE RESTRICTIVENESS INDEXES**

	<b>World Bank STRI</b>	<b>OECD STRI</b>
<b>Number of countries</b>	103 countries, of which 79 developing countries and 24 OECD (and 27 African countries)	42 countries, of which 34 OECD and other emerging economies (including Brazil, China, Colombia, India, Indonesia, Russia, South Africa)
<b>Number of sectors</b>	5 service sectors, namely: financial services (banking & Insurance); telecommunications; retail distribution; transportation; and professional services (legal & accounting only)	18 service sectors and sub-sectors: accounting; air transport; architecture; commercial banking; computer services; construction services; courier services; distribution; engineering; insurance; legal services; maritime transport; motion picture; rail freight transport; road freight transport; sound recording; telecommunications; television and broadcasting.
<b>Modes of supply</b>	Cross-border trade and Commercial presence (except for professional services where temporary movement is also covered)	Cross-border trade and Commercial presence
<b>Source of information</b>	Survey instruments administered to governments plus research to cover laws, regulations, decrees, etc.	Survey instruments administered to governments plus research to cover laws, regulations, decrees, etc.
<b>Date of information</b>	2007-2008	The country notes were last updated in December 2015; seven of the 18 country notes were updated in February 2016.

<sup>2</sup>The World Bank's STRI database encompasses information on the following AU Member States: Algeria, Botswana, Burundi, Cameroon, Congo (Democratic Republic), Cote d'Ivoire, Egypt, Ethiopia, Ghana, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritius, Morocco, Namibia, Nigeria, Rwanda, Senegal, South Africa, Tanzania, Tunisia, Uganda, Zambia and Zimbabwe. Information at: <http://iresearch.worldbank.org/servicetrade/>.

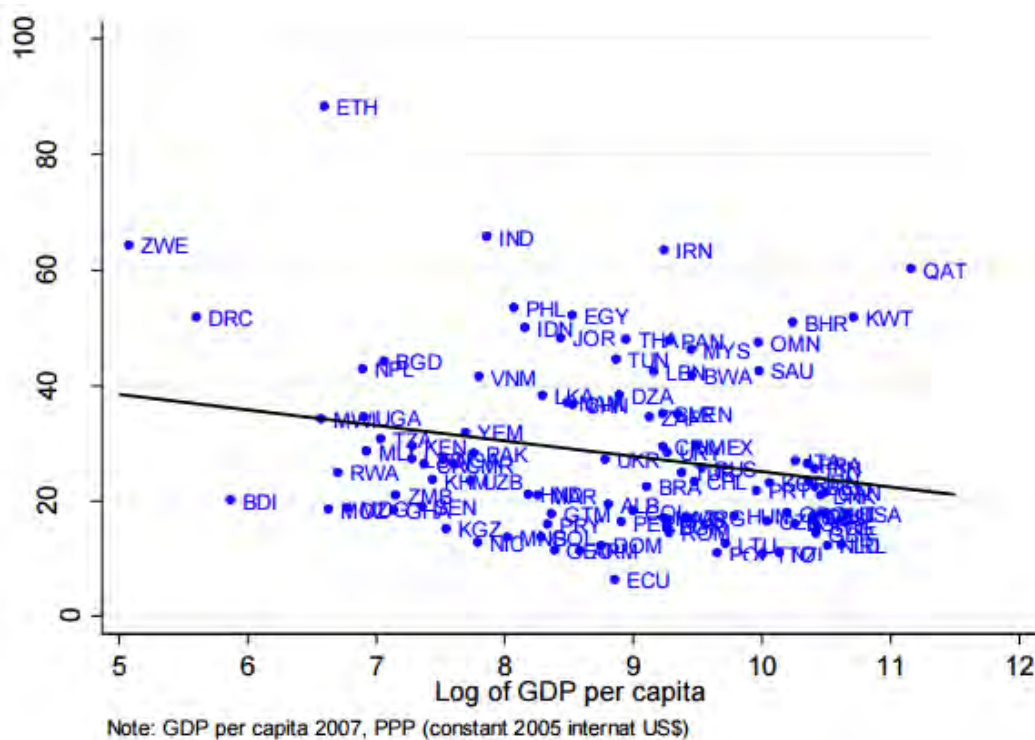
Using the World Bank’s STRI database to examine the restrictive impact of services regulations for the included AU members would be helpful in order to assess how strongly the measures in question restrict services trade into national economies.

## B. RELATIONSHIP BETWEEN SERVICES REGULATION AND DEVELOPMENT LEVEL

Appropriate and well-designed regulations in services are those that ensure competition both domestically and internationally by allowing firms to have access to the most efficient services for their output, while also protecting consumers from potential market failures. This results in a higher value contribution by services to the production and exports of both goods and services, while at the same time advancing sustainable development goals and contributing to greater participation in international trade.

The relationship between appropriate services regulations and economic development is thus a critical one. Information obtained from the STRI databases can be very useful to help assess this relationship through allowing us to observe the negative correlation that is evidenced between higher levels of services restrictive regulations (as given by the STRI indices) and the levels of GDP per capita as a proxy for development. Figure I shows that countries with lower STRI indices demonstrate a generally higher level of GDP per capita. Thus, a less restrictive (and presumably more efficient) services regulatory framework can be seen as positively related to a higher GDP per capita. This is a strong message that emphasizes the importance of appropriate and well-designed services regulations for attaining vital economic growth and sustainable development goals. Although only those African countries currently in the World Bank’s STRI database have been included in this study, it can be presumed that this relationship would hold for all AU Members.

**FIGURE I: RELATIONSHIP BETWEEN RESTRICTIVE SERVICES REGULATION AND LEVEL OF DEVELOPMENT**



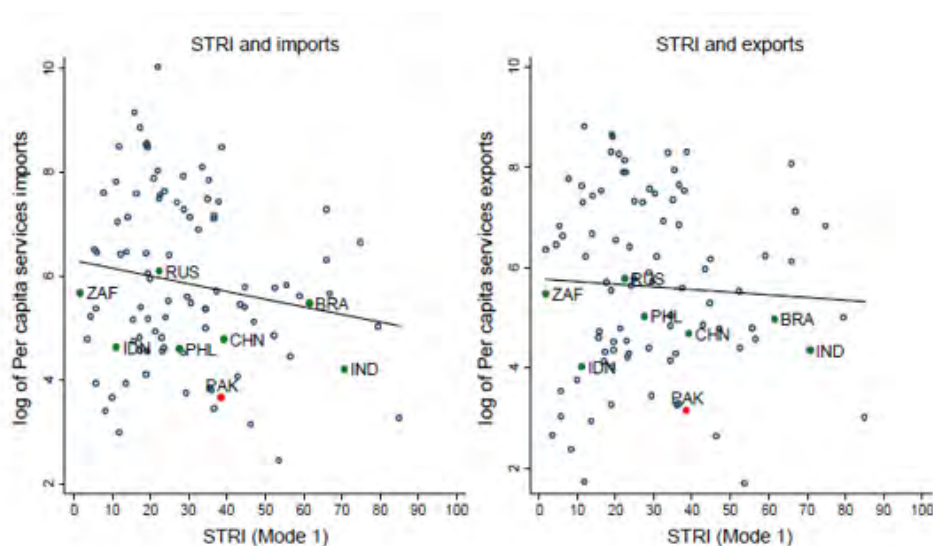
Source: Borchert, I., Gootiiz, B. & Mattoo, A., *Policy Barriers to International Trade in Services, Evidence from a New Database*, Policy Research Working Paper 6109, Washington DC: The World Bank, 2012, p. 21.

## C. RESTRICTIVE SERVICES REGULATIONS IMPACT BOTH EXPORTS AND IMPORTS

Information in the STRI databases can also be used to show the strong and interdependent relationship between imports and exports and the impact that restrictive services regulation will have on both. There is no way to isolate and restrict imports without negatively affecting the capacity to export, given the link between more efficient services inputs –sourced domestically or internationally – and a boost in external competitiveness in manufacturing and agricultural sectors that significantly use services inputs.

Figure 2 shows how services restrictiveness (as measured by levels of STRI indices) affects imports and exports per capita, respectively, for cross-border trade. As it can be expected, higher levels of STRI indices (or greater levels of restrictions on services) result in lower levels of imports. However, it is striking that higher levels of STRI indices are also correlated with lower levels of exports. This interesting finding has two explanations. First, imports are important as inputs in determining the competitiveness of exports. Second, many regulations affecting services do not specifically target foreign suppliers but all services suppliers. More restrictive regulations will result in less efficient services, which will negatively impact the ability of firms to compete and export. Thus, higher levels of services protection are felt by the entire economy and not just by the import sector.

FIGURE 2: IMPACT OF SERVICES RESTRICTIONS ON IMPORTS AND EXPORTS (MODE 1)



**Source:** van der Marel, E. (2016) "Regulatory Comparative Advantage in Services", forthcoming in P. Sauve and M. Roy (editors), *New Horizons in Services Trade Governance*, Research Handbook on Services Trade, Edward Elgar publishers.

In a globalized economy nearly all services can be considered “tradable” when they are incorporated into traded products. Using applications from the information contained in the STRI databases allows policy makers to understand that it is self-defeating to adopt inappropriate levels of restrictive services regulation, since this will harm overall economic development through stifling competitiveness and working against export diversification.

## D. SERVICES RESTRICTIONS VIEWED BY THE PRIVATE SECTOR

It is interesting and revealing to know how restrictions on services trade are perceived by actual service providers or private firms and what type of restrictions they feel have the biggest impact on

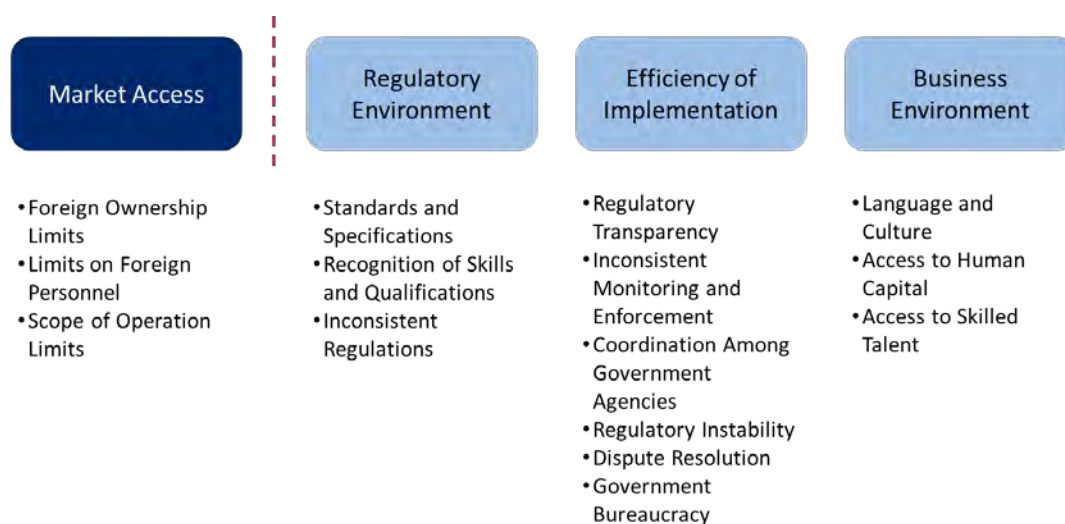


their operations. While such a survey has not yet been carried out in Africa to the author’s knowledge, it is nonetheless instructive to review the results of a survey given to services firms in the Asia Pacific region. For these private sector services exporters, the services restrictions with the greatest trade impact in the market access arena were reported to be regulations affecting foreign investment (ownership) together with limits on the ability of firms to bring workers into the country with their investments. The results of this survey are summarized in Table 3.

With respect to the general regulatory environment, the biggest impediments perceived by these service firms were the differing quality of standards and specifications for services, the procedures for recognition of skills and qualifications (including licensing) and the inconsistent application of existing regulations. Additionally, the lack of transparency of laws and regulatory decrees was considered to be a deterrent to trade, as well as regulatory instability (frequent changes in regulations) and the lack of coordination among government agencies. It would be useful to conduct a similar survey for services firms throughout Africa to see if the results would mirror those in the table below. However, it could be presumed that similar types of barriers pose problems to firms operating in all regions of the world.

While it is clearly not possible to have services operate in a domestic economy without accompanying regulation, it is important for governments to minimize the restrictive impacts of regulation on the private sector and to evaluate how well regulatory measures serve the purpose for which they are set out to achieve. The key question is the following: **How to maximize the role of services regulation to address market failures, achieve public policy goals, and reach universal service targets, while ensuring at the same time the functioning of a more efficient economy as well as greater competition from services providers in both the domestic and international markets?** Many of these issues are addressed in the companion paper to this one (*Principles and Best Practices for Domestic Regulation of Services (December 2016)*). As previously mentioned, the two papers should be read and used together by AU government officials, as the information is complementary.

**TABLE 3: SERVICES TRADE IMPEDIMENTS WITH GREATEST IMPACT AS VIEWED BY FIRMS IN THE ASIA PACIFIC REGION**



## IV. Information Required to Put Together an Inventory of Measures Affecting Services Trade

An essential part of the evaluation of the appropriateness of regulations for a regulatory impact assessment is to prepare a comprehensive regulatory audit document. This involves evaluating the information on measures affecting services that is contained in the inventories of measures discussed above, including both horizontal measures as well as sector-specific measures. Based on the inventory of measures document, it is possible to evaluate the national regulatory framework for services in a systematic way. The regulatory audit should include the following information:

- I. Horizontal regulations: these are measures that affect all services industries, such as restrictions on movement of people (Labor Code), limitations on foreign equity ownership (Investment Code), restrictions on transfer of funds or restrictions on land use (Environmental Code).
- II. Sectoral regulations: these are measures affecting certain service sectors. For instance, a general regulation framework affecting an entire sector, such as auditing requirements for financial services.
- III. Service level regulations: these are measures that affect specific activities in services or service subsectors. For example, regulation affecting a specific professional service, which emanates from a particular body such as an accounting association.
- IV. Informal administrative practices (in addition to formal laws and decrees) that may have a 'de facto' restrictive impact on service providers.

For each of these regulatory layers, it is necessary to identify the regulations that affect trade in services through setting out the following about the measure:

- If it constitutes a restriction on access to and/or operation in a market or acts in a way that discriminates against foreign services providers (national treatment)
- If it is quantitative or qualitative in nature
- If it affects cross-border trade or commercial presence or labor mobility
- If it is discriminatory or not and if so, discriminatory *de jure* or *de facto*.

There are several types of formats that could be followed for the purpose of collecting the above information that would serve as the basis for carrying out a regulatory audit. It is important that AU Members select the format that is the most helpful for their needs. The following section carries out a gap analysis of five different existing templates that could be used to collect such information on services regulations affecting trade, with a discussion of the pros and cons of each one.

# V. Gap Analysis of the Suitability of Existing Templates for Constructing Services Inventories of Measures by AU Members

As discussed in the preceding sections and in the accompanying companion paper on *Principles and Best Practices for Domestic Regulation of Services (December 2016)*, evaluating the appropriateness of services regulation by AU Member States is a highly critical undertaking for improving economic efficiency. In order to be in a position to do this, Government officials and regulators must have all of the necessary information available to them in the form of an inventory of services measures.

Just as there are various modalities that can be selected for negotiating services liberalization, there are also various services templates that can be drawn upon for a services regulatory audit. The choice of a template for a regulatory audit is important, as it can influence the ease with which the audit can be conducted, as well as the usefulness of the information obtained. Four main examples of existing templates are reviewed in this section in a gap analysis, in order to evaluate which of these might be the most appropriate for use by AU Members.

## A. TEMPLATE USED FOR POSITIVE LIST SERVICES AGREEMENTS (GATS)

The format that has been used to schedule services commitments in the WTO can also serve as a template for collecting information on measures affecting trade in services, albeit with some important adaptations of the understanding on what should be included in such an adapted template.

The three main adaptations that must accompany the use of a GATS-type template for the purpose of putting together an inventory of services measures are the following:

1. Information on the measures must be representative of actual applied laws and regulations and not based on a hypothetical level of openness, as is the case in the WTO GATS Schedules.
2. A reference to the law, regulation or decree underlying the measure must be included in the template, to accompany a brief description of the measure and to ensure that the information is factually correct and currently relevant. This reference should include the original law or regulation, as well as the most recent update or amendment to it.
3. Information on non-discriminatory measures that are thought to have a potentially negative impact on services trade should also be included in both the market access and national treatment columns. While this is not a requirement in the WTO GATS context, it would be important to include these relevant measures in an inventory. Which measures to incorporate would be up to the discretion of each AU Member Government on the basis of its evaluation of which, if any, of the non-discriminatory regulations for a given sector or sub-sector, might negatively impact services trade (through any of the modes). For example, a residency requirement imposed by government on service providers may apply the same across the board to all service providers but will certainly negatively impact the ability of the foreign services provider to access the domestic market, particularly through mode I. Such a measure should therefore be included. Likewise for the example

of a situation where a finite number of licenses are available for the establishment of bank branches or for the practice of accountants or any category of professional service. These regulations would also need to be included, as they would negatively impact foreign services providers. And similarly for the case of various types of taxes that might impact foreign services firms in a more stringent manner than domestic firms.

**TABLE 4: ADAPTED POSITIVE LIST (GATS) TEMPLATE**

Sector or sub-sector	Measures affecting market access Discriminatory/ non-discriminatory	Measures affecting national treatment discriminatory/ Non-discriminatory
<p><b>HORIZONTAL MEASURES</b></p> <p>All services included in this schedule</p> <ul style="list-style-type: none"> <li>• By Sector</li> <li>• By Measure</li> </ul>	<p>Include information by mode of supply: 1), 2), 3), and 4)</p> <p>With actual name of law, regulation or decree included for each measure</p>	<p>Include information by mode of supply: 1), 2), 3), and 4)</p> <p>With actual name of law, regulation or decree included for each measure</p>
<p><b>SECTOR-SPECIFIC MEASURES</b></p> <p>Sector and/or Sub-sector, etc.</p>	<p><b>Discriminatory measures:</b></p> <p>By mode of supply: 1), 2), 3), and 4)</p> <p>With actual name and reference for each relevant law, regulation or decree included for each measure</p> <p><b>Non-discriminatory measures:</b></p> <p>By mode of supply: 1), 2), 3), and 4)</p> <p>With actual name and reference for each relevant law, regulation or decree included for each measure</p>	<p><b>Discriminatory measures:</b></p> <p>By mode of supply: 1), 2), 3), and 4)</p> <p>With actual name and reference for each relevant law, regulation or decree included for each measure</p> <p><b>Non-discriminatory measures:</b></p> <p>By mode of supply: 1), 2), 3), and 4)</p> <p>With actual name and reference for each relevant law, regulation or decree included for each measure</p>

The advantage of using an adapted GATS format for the template is that it is familiar to all AU Member Governments. However, the adaptations that are critical for an inventory to be based on this template must be effectively communicated and well understood. It would not be sufficient for AU Members simply to repeat what was included in their GATS Schedules of Commitments, as this would not fulfill existing needs for a complete and accurate database of information on regulations affecting services trade.

## B. TEMPLATE USED FOR NEGATIVE LIST SERVICES AGREEMENTS

The Negative List Template has been used in many different trade agreements around the world since it was first pioneered by the United States and its North American trading partners in the NAFTA in 1993. However, the template that has been used to set out information in Annexes of Non-conforming Measures that form part of negative list agreements does not necessarily need to be associated or used in only this context. It can also be adapted to collect information on measures affecting services trade, in a similar way as the Adapted GATS Template, again with suitable modifications.

An example of such an Adapted Negative List Template is below. It would require AU Members to indicate the sector or sub-sector in question on each page, with the corresponding information on measures set out by those affecting market access and those affecting national treatment. Rather than four modes of supply, a measure would be listed only if it affected cross-border trade (with modes 1 and 2 included together), commercial presence (mode 3) or movement of natural persons (mode 4). A measure would be included whether it was discriminatory or non-discriminatory, as long as it was presumed to negatively impact upon services trade.

The template shown below has been adapted from the way it is used in negative list trade agreements in order to remove reference to “core disciplines” (such as MFN, national treatment, market access and others in the case of commercial presence) in the listing of the measures. It has also been adapted by the inclusion of measures affecting the movement of natural persons (mode 4), which is absent from most negative list trade agreements.

Importantly, in this Adapted Negative List Template each measure included must be accompanied by a short description of what it consists of, as well as a reference to its legal basis in terms of the corresponding law, regulation or decree in question. This description goes one step further than what is suggested for the Adapted GATS Template in the previous section and can have the effect of making the inventory more accessible to trade officials and regulators. For example, an Economics Needs Test measure would need a description of what it involved, including the criteria used to evaluate decisions regarding foreign services providers. However, this requirement can be omitted for this template; and/or it can be included for the previous one. What is essential in all cases is the legal reference that must provide the title of the original law or regulation, as well as the most recent update or amendment to it.

TABLE 5: ADAPTED NEGATIVE LIST TEMPLATE

Sector	EXAMPLE: EDUCATION
<b>Service Industry in question</b> (possible accompanying classification but not required)	
Measures Affecting Market Access A. Cross-border B. Commercial Presence C. Movement of Natural Persons both discriminatory and non-discriminatory measures	
<b>Description of the Measure</b> (with reference to the corresponding law, regulation or decree)	
Measures affecting National Treatment A. Cross-border B. Commercial Presence C. Movement of Natural Persons both discriminatory and non-discriminatory measures	
<b>Description of the Measure</b> (with reference to the corresponding law, regulation or decree)	
Additional Information (future planned revision of law or future liberalization)	

One of the advantages of an Adapted Negative List Template is that it would only be necessary to include information on sectors where existing regulations are in place that impact upon services trade, as opposed to the Adapted GATS Template, which encompasses all services sectors and sub-sectors. Another advantage of this format is relative simplicity, given that a detailed classification system is not needed. Broad sectoral descriptions can suffice.

While the information in the Adapted GATS Template is set out by the sectoral classification system contained in the GATS W/120 document (from 1991 and now very outdated), the Adapted Negative List Template avoids the problem of obsolescence by simply requiring the mention of the services

industry in question without necessarily requiring a classification description. However, if AU Members felt more comfortable in using a classification system for the listing of measures under this format, they certainly could do so.

## C. TEMPLATE USED BY APEC FOR INDIVIDUAL ACTION PLAN REPORTS

The 21 Member grouping of countries in the Asia Pacific within the APEC (Asia Pacific Cooperation Council) has long worked toward achieving more open trade and investment in the region. This was the impetus behind the creation of APEC in January 1989 and has been its guiding light ever since. The objective was made concrete in the form of the Bogor Goals adopted by APEC Leaders at their meeting in Indonesia in 1994, when they committed to achieve free and open trade and investment by 2010 for industrialized economies and by 2020 for developing economies.<sup>3</sup> APEC has achieved progress to date not through the negotiation of a formal trade agreement but rather through a process described as “concerted unilateral liberalization”, whereby each member economy moves forward at its own pace to open its economy on a gradual basis.<sup>4</sup> Services have been included with goods and investment from the beginning as part of APEC’s liberalization objective.

The process of moving forward unilaterally has been prodded by a constant monitoring of APEC economies through the submission of “Individual Action Plans” (IAPs). These IAPs identify the existing measures or restrictions affecting services and investment (among others) in their economies and the steps that APEC members have taken to lift or relax these restrictions.

The Individual Action Plan is effectively a report set out according to an agreed template that all APEC economies must submit regularly. It records the actions that each member has taken to reach the Bogor Goals through undertaking liberalizing trade and investment measures in 15 different issue areas, of which services, investment and mobility of business persons (mode 4) are three key areas.<sup>5</sup> The

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<sup>3</sup> The APEC grouping includes the following 21 economies: Australia; Brunei Darussalam; Canada; Chile; China; Hong Kong, China; Indonesia; Japan; Malaysia; Mexico; New Zealand; Papua New Guinea; Peru; The Philippines; Russia; Singapore; Republic of Korea; Chinese Taipei; Thailand; the United States and Viet Nam. Most of these countries have a coastline on the Pacific Ocean. The Bogor Goals continue to serve as APEC’s guiding principle of work, namely the reduction of barriers to trade and investment and the promotion of the free flow of goods, services and capital among APEC economies. Information on the work of APEC’s Group on Services can be found at the following website: <http://www.apec.org/Groups/Committee-on-Trade-and-Investment/Group-on-Services.aspx>. The latest progress report on the implementation of the Bogor Goals was carried out by the APEC Policy Support Unit in 2014 and can be found at: [http://publications.apec.org/publication-detail.php?pub\\_id=1564](http://publications.apec.org/publication-detail.php?pub_id=1564)

<sup>4</sup> In more recent years APEC economies have been discussing the possibility of launching negotiations on a formal “Free Trade Agreement of the Asia Pacific” or FTAAP. At the 2014 APEC summit in Beijing, APEC leaders agreed to launch “a collective strategic study” on the FTAAP and instruct officials to undertake the study, consult stakeholders and report the result by the end of 2016. After reviewing the study (jointly led by the United States and China), the objective to undertake steps toward an FTAAP was endorsed by APEC Leaders in their 2016 Lima Declaration, with a separate and full Annex devoted to the FTAAP, in which the APEC members stated the following:

- We reaffirm our commitment to advance the process in a comprehensive and systematic manner towards the eventual realization of the FTAAP as a major instrument to further APEC’s regional economic integration agenda;
  - We reaffirm that APEC’s core objective will be to attain the Bogor Goals by 2020, and that efforts in support of the realization of the FTAAP will serve as a driving force to further advance regional economic integration;
- See [pecc.org/Meeting-Papers/Leaders-Declarations/2016/2016\\_aelm/2016\\_Annex%20A.aspx](http://pecc.org/Meeting-Papers/Leaders-Declarations/2016/2016_aelm/2016_Annex%20A.aspx)

<sup>5</sup> The other 12 issue areas that are covered by the IAP review process and for which information is collected and compiled are: tariffs; non-tariff measures; standards and conformance; customs procedures; intellectual property;

IAPs have been undertaken since 2005 (and bi-annually since 2012). The content of the IAPs are subject to an APEC peer review process in which all APEC economies can participate.

Each section of the IAP contains comprehensive information on trade and investment measures for each issue area. It provides details of action taken over the last 12 months and planned further improvement. The IAP report requires the inclusion of hyperlinks and access details (emails, websites and phone numbers) for relevant contact points for each of the areas included so as to facilitate access to comprehensive information by any interested party. The information in the annual (now bi-annual) report is meant to be read against a base year table put together in 1996 when the IAPs were first submitted and shortly after the Bogor Goals were adopted. The base year table provides the “starting point: or ‘snapshot’ of information on the measures in each area at that initial point in time. The subsequent IAPs point out improvements to this base point. The APEC Policy Support Unit publishes a “cumulative improvements table” for APEC economies on a regular basis that puts the annual report information in context, with recognition to the different starting points of economies in the trade and investment liberalization process.<sup>6</sup>

Under the area of services, the information required for the IAPs covers legal requirements, licensing and other qualifications necessary to practice the service and specification of arrangements governing foreign participation in the domestic supply of services. For investment, information is required on the general investment policy framework, with details concerning transparency, capital transfer procedures, non-discrimination policies, expropriation and compensation, performance requirements and instruments to avoid double taxation relevant to foreign investors. The mobility of business persons (partially covering mode 4) asks for information on visa regimes to facilitate movement of business people in the APEC region, including short-term business entry and temporary residency.

The Template that APEC economies use for the review of their Individual Action Plans is constructed quite differently from that in the two templates discussed previously. It is reproduced below in Table 6. The APEC IAP Template has been adapted to make it more suitable for constructing a comprehensive inventory of measures affecting services trade in a possible AU context. This adaptation has included the specific mention of all of the services sub-sectors as well as dividing information between horizontal and sector-specific measures. The Adapted APEC IAP Template shown below requires that existing measures affecting services trade be supported by a reference to law or decrees currently in force, as well as indications of proposed or planned future liberalization, similar to the APEC model.

One advantage of the Adapted APEC Individual Action Plan Template is the simplicity of its presentation. With only two columns for the presentation of the information, it is easy to follow. Another big advantage is the inclusion of the website for further information and the name of the relevant Ministry or Government body responsible for the sector or area, together with contact details of specific officials.

A strong disadvantage of the Adapted APEC IAP Template is that it does not set out the measures included in the inventory by mode of supply, nor by whether they affect market access or national treatment. This is all subsumed in the summary information in the middle column. From this point of view it is less complete than the previous templates. Nor does the APEC IAP Template require the use of a particular classification system for the inclusion of measures affecting services, which makes

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competition policy; government procurement; deregulation; WTO obligations; rules of origin; dispute mediation; information gathering and analysis.

<sup>6</sup> Information on the APEC Individual Action Plan submissions can be found at <http://www.apec.org/About-Us/How-APEC-Operates/Action-Plans/IAP-Submissions.aspx> Information on the Peer Review Process for the IAP submissions can be found at <http://www.apec.org/About-Us/How-APEC-Operates/Action-Plans/IAP-Peer-Review.aspx>



comparison between economies a challenge. Lastly, the information in this template is divided between three categories (all services), namely: services, which would cover only cross-border measures; investment, which would cover measures affecting services under Mode 3; and labor mobility, which would cover measures under Mode 4 affecting temporary movement of service providers. Thus information from three must be put together to obtain a complete picture, rather than found in the same place for each service sector.

**TABLE 6: ADAPTED APEC INDIVIDUAL ACTION PLAN TEMPLATE**

*Description of current policy regime and highlights of recent policy developments that indicate progress towards liberalization*

<b>NAME OF SECTOR AND/OR MODE OF SUPPLY</b>	<b>Basic Law or Regulation in Force</b>	<b>Liberalization undertaken during previous year and further improvements planned</b>
<b>Services</b> (cross border)	Current Services Regime as set out below (legal title of law or regulation and short description of content)	<i>Description of liberalizing measures taken during past 12 months and/or actions planned for the future.</i>
<b>Services: by Major Sector</b> <i>Business Services</i> <i>Communication Services</i> <i>Construction Engineering</i> <i>Distribution Services</i> <i>Education Services</i> <i>Environmental Services</i> <i>Financial Services</i> <i>Health Services</i> <i>Recreational and Cultural Tourism Services</i> <i>Transport Services</i>	Title of Law or Regulation for each sub-Sector, where relevant, and summary of content of Law or Regulation in force	
<i>Website for further information:</i>	Website where information can be obtained on services measures for each sector	
<i>Contact point for further details:</i>	Person responsible within Ministry of Trade for coordinating Work on Services; Contact person for each of the service sectors included	

<b>Investment: Horizontal Measures</b>	Current Investment Regime (legal title of law or regulation and short description of content)	Description of liberalizing measures taken during past 12 months and/or actions planned for the future.
<b>Investment: by Major Service Sector</b>  Business Services Communication Services Construction Engineering Distribution Services Education Services Environmental Services Financial Services Health Services Recreational and Cultural Tourism Services Transport Services	Indication of any sector-specific type of measures affecting investment in addition to the general Investment Regime	
<i>Website for further information:</i>	Website where information can be obtained on investment for each sector	
<i>Contact point for further details:</i>	Person responsible within Ministry of Trade for coordinating Work on Services; Contact person in the Investment Promotion Agency	
<b>Labor Mobility</b>	Current Labor Regime (legal title of law or regulation and short description of content)	
<b>Labor Regime: by Major Service Sector</b>  Business Services Communication Services Construction Engineering Distribution Services Education Services Environmental Services Financial Services	Indication of any sector-specific type of measures affecting mobility of foreign workers in addition to the general Labor Regime	

Health Services Recreational and Cultural Tourism Services Transport Services		
Website for further information:	Website where information can be obtained on immigration requirements.	
Contact point for further details:	Person responsible in Immigration Office or Ministry of Labor	
<b>Regulatory Practices</b>	Describe the practices and/or requirements in place to evaluate services and investment regulations. <ul style="list-style-type: none"> <li>• Is there a Code of Good Regulatory Practice? If so, on what criteria is it based?</li> <li>• Is there a process of Regulatory Impact Analysis (RIA) carried out to evaluate services and investment regulations?</li> <li>• If an RIA process does exist, who is responsible for carrying it out?</li> <li>• If an RIA process does exist, is public consultation a part of it?</li> </ul>	<ul style="list-style-type: none"> <li>• If there is no Code of Good Regulatory Practice, are there any plans to adopt one?</li> <li>• If there is no Regulatory Impact Analysis (RIA) procedure in place, are there any plans to adopt one?</li> </ul>
Website for further information:	Website where information can be obtained on national Regulatory Practice and Regulatory Impact Analysis	
Contact point for further details:	Person within Ministry or Regulatory Body responsible for carrying out the Regulatory Impact Analysis and communicating with the public	

## D. TEMPLATE USED BY THE PACIFIC ISLAND COUNTRIES IN THE PACER PLUS

For the purpose of their negotiations with Australia and New Zealand toward the PACER Plus trade agreement, the 14 Members of the Pacific Island Forum (PIF)<sup>7</sup> adopted a template to collect information on measures affecting services trade as part of the readiness process for entering into these negotiations.<sup>8</sup> The purpose of this exercise was to obtain the necessary information that would allow the PIF members to be in a better position to understand the regulatory panorama in their national economies as well as to inform their negotiating interests.

The template used for the preparation of negotiating positions in the PACER Plus is again set out differently from the three that have been presented above, and is reproduced in an adapted version in Table 7. It is important to understand that the template below was not used for the purpose of making commitments under the PACER Plus, which are set out in a positive list standard GATS format in a separate legal document by each participant, but rather for the purpose of obtaining the necessary underlying information needed to inform and help define national positions for countries to pursue these regional negotiations.

The Adapted PACER Plus Template has several columns that require the identification and listing of information on each of the measures affecting the service sectors and sub-sectors in the CPC I Provisional classification list.<sup>9</sup> These include: the identification of the sector; its CPCProv number (where available); the title of the actual law, regulation or decree and its date (under existing measure); a brief description of the relevant content of the law (one, two or three sentences explaining what the law, etc. includes and how it affects service providers including for example, if approval or a license is needed to provide the service, if there are forms of quantitative

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<sup>7</sup> The Pacific Island Forum comprises 14 countries in the Pacific region with a regional Secretariat located in Suva, Fiji. The countries are: Cook Islands, Fiji, Kiribati, Marshall Islands, Micronesia, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. Australia and New Zealand are also members of the Pacific Island Forum.

<sup>8</sup> The PACER Plus negotiations to liberalize trade in services between the 14 developing Forum Island members and Australia and New Zealand are an outgrowth of two earlier agreements. The basic PACER (Pacific Agreement on Closer Economic Relations) is the original umbrella agreement between these 16 countries, which has provided a framework for trade cooperation for the region as a whole since it entered into force in 2002. While the original PACER does not contain trade liberalization provisions, it set the basis for envisaging a step-by-step process of trade opening. The first agreement in this process was the PICTA or the Pacific Island Countries Trade Agreement, signed in 2001, that constitutes a free trade agreement in goods among the Pacific Island countries and will enter into force as soon as it is ratified by the required number of countries. As of end 2016, eight of the 14 developing Forum Island Members had ratified. The PICTA was subsequently extended to services with the PICTA Trade in Services Agreement (TIS) negotiations, begun in 2008 and concluded in 2012. The PICTA TIS commitments focus on service sectors with common priorities for all Forum Island Countries, notably tourism, transportation, telecommunications and business services. With a view to complementing these two agreements, the PACER Plus negotiations, incorporating Australia and New Zealand as well, were begun in August 2009 and concluded in August 2016. The PACER Plus Agreement covers both goods and services. Services were negotiated as part of the integral outcome. Information on the PACER Plus Agreement and its background can be found at: [https://aric.adb.org/fta/pacific-agreement-on-closer-economic-relations-\(pacer\)-plus](https://aric.adb.org/fta/pacific-agreement-on-closer-economic-relations-(pacer)-plus).

<sup>9</sup> The CPC1 Provisional is an updated version of the first UN Product Classification list set out by the WTO in 1991 for the purpose of negotiating and listing services commitments during the Uruguay Round. The CPC1 Prov has not been officially adopted by WTO Members for the Doha Round negotiations but many countries use it nonetheless.

restrictions in the law, and how its provisions may specifically affect foreign service providers); an indication of the mode/s of supply to which the law or decree applies; an indication of whether the law is discriminatory (affecting only foreign service providers) or non-discriminatory (affecting all service providers); an indication of whether the measure affects market access or national treatment, or both; and a final column where information on any current review of the existing law or decree that might be underway or any future scheduled liberalization of the measure in question can be included.

The original PACER Plus Template lacked the column on market access and national treatment, which is an important part of the identification of the impact of measures affecting trade in services, and has thus been included in the adapted version below.

**TABLE 7: ADAPTED PACER PLUS TEMPLATE**

Sectors and sub-sectors <sup>10</sup>	CPCprov <sup>11</sup>	Existing measure(s) – title of law, decree and its date	Brief description of existing measure(s) - content of law, decree, etc. in a few sentences	Mode of supply to which the measure applies <sup>12</sup>				Is the measure discriminatory (D) or non-discriminatory (N)	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
<b>1. BUSINESS SERVICES</b>										
A. Professional Services									Are there any changes to the Law or Act under review?	

NOTE: IF THE SECTOR IS NOT REGULATED, INDICATE WITH NR\* UNDER EXISTING MEASURES.

The above Adapted PACER Plus Template is more complete in its coverage than the other three templates presented in this section, yet it has the advantage of being straightforward to follow. It includes all of the information that would be useful and desirable to have in a single document amassing measures affecting services trade, and is set out in a way that makes it easy to both understand and to complete, as well as subsequently to use.

<sup>10</sup> List of sectors and sub-sectors, including CPC codes, from WTO Doc. MTN.GNS/W/120 (1991), “Services Sectoral Classification List,” available at [www.wto.org/english/tratop\\_e/serv\\_e/mtn\\_gns\\_w\\_120\\_e.doc](http://www.wto.org/english/tratop_e/serv_e/mtn_gns_w_120_e.doc).

<sup>11</sup> See <http://unstats.un.org/unsd/cr/registry/regcst.asp?Cl=9&Lg=1> for details.

<sup>12</sup> See [http://www.wto.org/english/tratop\\_e/serv\\_e/cbt\\_course\\_e/c1s3p1\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/cbt_course_e/c1s3p1_e.htm) for details.

## E. RECOMMENDATION FOR A TEMPLATE TO BE USED BY AU MEMBERS TO CONSTRUCT THEIR INVENTORY OF MEASURES AFFECTING SERVICES TRADE

This paper recommends that the African Union Members adopt the Adapted PACER Plus Template as the basis for the elaboration of national inventories of measures affecting services for their preparation to engage in the CFTA services negotiations. The arguments in favor of this choice are several. The template is more complete in its coverage than the first three templates presented in this section, yet it is easy and straightforward to follow. The information collected for the template should be inputted electronically, so that the resulting document can easily be updated on a regular basis. The format lends itself to electronic manipulation and to being put into “searchable” form. This can be done even with the simple adoption of Excel for the template information.

Selecting a common template for all AU Members to follow for this purpose also has distinct advantages. A common template would facilitate comparison and use in the CFTA services negotiations, as a basis for determining national commitments. The adoption of a common template would make it possible to combine the national inventories of measures for the AU Member States into an AU-wide database that could then be made electronically “searchable” by sector, measure, mode of supply, country, etc.). This step would not be possible if a common format is not adopted.

**A detailed version of a proposed AU Template for the Inventory of Services Measures has been placed in Appendix I**, given its length. The proposed template in question is a complete version of what the inventory would look like, and provides a document that AU Member States could immediately begin to use. The proposed template is divided between a section on horizontal measures and a section on sector-specific measures, according to the CPC I Prov classification. It also includes questions that should help those filling out the Inventory understand what information is being requested.

The responsibility for putting together a national inventory of measures should be vested in the Ministry of Trade of each AU Member. However, the information will need to be collected with the cooperation of all of the relevant Ministries and regulatory agencies that are responsible for the service sectors included. The completed national inventories should be shared with the African Union Department of Trade and Industry, who may put them up on a secure website if the AU Members so agree.



## VI. Using the Information from a Services Inventory of Measures in a Regulatory Impact Assessment

Evaluating the appropriateness of services regulation is a highly important process that can only be carried out once a template has been selected and the relevant measures have been identified at both the horizontal and sectoral level and canvassed in an inventory of measures. With an inventory of measures in hand, it will be possible for AU officials to better evaluate how effectively the regulations in place in their economies are fulfilling the objectives they were set out to achieve. For the regulatory audit, both the choice of a method to carry out the regulatory audit, as well as the degree of sophistication and training required to implement and monitor it, are key considerations in this process.<sup>13</sup> A combination of the economic, regulatory and institutional context must be taken into account in deciding which instrument is most appropriate for achieving the desired regulatory outcome.

A regulatory impact assessment (RIA) is the final step in the process of examining the appropriateness of regulations affecting services. It follows the adoption of general regulatory principles, as discussed in the companion paper on *Principles and Best Practices for Domestic Regulation of Services (December 2016)* and the elaboration of a national inventory of measures affecting services trade on the basis of an agreed template, as discussed in this paper.

The purpose of a regulatory impact assessment is to put the general regulatory principles into practice in order to achieve the most appropriate regulations for services while avoiding regulatory failure and regulatory capture. Though services regulation is necessary and even essential in many cases, not all regulation is good and leads to positive results. Laws and regulations can have adverse effects on the economy and stifle competition. They can favor one set of producers over another, or increase producer benefits at the expense of consumers. Unnecessary costs and administrative processes often are dictated by regulations that impact the ability of firms to operate efficiently, thus increasing costs and discouraging innovation. Non-transparent regulation can deter new firms from entering the market and limit the amount of output. There is also a real danger of regulatory failure when regulations are not properly designed and their outcomes are welfare reducing, or when regulation is motivated by reasons that are not economically justified and/or do not serve the public interest.

For these reasons, a regulatory impact assessment is a very important exercise that can help AU governments assess whether the current regulatory framework in their country addresses market failures and achieves public policy goals for various service sectors so as to ensure that these

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<sup>13</sup> Four different types of institutional limitations have been identified that affect regulator capacity in developing countries. They include: lack of resources; limited accountability; limited commitment and the difficulty of relying on contract enforcement; and limited revenue to allow for subsidization of certain services with public goods characteristics. These limitations must be taken into account when designing regulations. See Antonia Estache and Liam Wren Lewis (2009), "Toward a Theory of Regulation for Developing Countries", *Journal of Economic Literature*, 47 (3), pages 729-70.

services contribute to sustainable and inclusive development. An RIA can only be carried out, however, when the information on services regulations is available in the form of a comprehensive inventory of measures.

## A. OBJECTIVE AND STEPS IN CONDUCTING A REGULATORY IMPACT ASSESSMENT

A regulatory impact assessment (RIA) consists of a systematic appraisal of how a regulatory measure in the form of a law or administrative decree or practice affects different stakeholders, economic sectors and the natural environment. It is a method of systematically and consistently examining impacts arising from existing or potential government regulations and communicating this information to decision-makers. Such a policy tool is used to assess proposed regulations as well as to examine the effects of current regulations.

The (RIA) formalizes and provides evidence of the steps that should be taken in policy formulation and provides consistency in the presentation of this information. Completion of an RIA will help to provide AU Governments with assurance that existing, new or amended regulatory proposals are subject to proper analysis and scrutiny as to their necessity, efficiency, and net impact on community welfare. This enhances the Government's ability to make well-informed decisions. Conducting a regulatory impact assessment or regulatory impact analysis should allow AU officials to answer the question of whether the current regulatory framework in their country addresses market failures and achieves public policy goals in the best possible manner and with the least cost.

The completed RIA should contain the following information:

- I. statement of the nature and magnitude of the problem and the need or justification for government action;
- II. a statement of the public policy objective(s);
- III. a statement of feasible options (regulatory and/or non-regulatory) that may constitute viable means for achieving the desired objectives(s);
- IV. a statement of the net benefit of the existing or proposed regulation, including the total regulatory costs (administrative, compliance, and economic costs) and benefits (including non-quantifiable benefits) of the proposal and other feasible options; and
- V. a statement of the consultative program undertaken in the RIA process.

A regulatory assessment can serve different objectives, ranging from filling information gaps to supporting regulatory reform and participation in trade negotiations. It can also help identify inconsistencies between domestic regulations and international trade disciplines on services, such as those on MFN, market access and national treatment. An RIA should be able to sort out those regulations that are non-discriminatory but may have trade restrictive impacts, as well as those regulations that would lie outside of international trade agreement disciplines as they are meant to serve well-defined legitimate public policy objectives. Finally, a regulatory assessment can contribute to evaluate the role and performance of regulatory institutions, and to promote better regulatory practices in general.

The World Bank (2014) has issued a *Regulatory Assessment Toolkit: A Practical Methodology for Assessing Regulation on Trade and Investment in Services* that sets out a detailed methodology for

assessing regulation on trade and investment in services based on the application of three modules that set out to do the following:

- Map regulations and evaluate regulatory governance;
- Assess the impact of services regulations through application of empirical methods; and
- Identify alternative regulatory strategies and measures.<sup>14</sup>

The World Bank methodology represents a very complete approach to the question of regulatory assessment; however, for many African countries it will be challenging to apply these modules in their domestic context. The OECD (2008) has also published an earlier *Handbook for Undertaking Regulatory Impact Analysis* as a guideline for its members and other interested countries.<sup>15</sup>

Appropriate regulations should help to promote inclusive market development and effective regulatory reform. While some regulations are designed for the entire economy (horizontal in nature), many regulations are sector-specific and respond to the need in many instances for regulations to be identified and implemented by sector. Appropriate regulations should be a function of both the sector itself (market imperfections present) as well as the desired policy objective for that sector.<sup>16</sup> While the adoption of general guidelines and regulatory principles at the national level is a useful step and a good accompanying tool, much of the national regulatory framework will be sector specific.<sup>17</sup>

## B. MAIN COMPONENTS OF A REGULATORY IMPACT ASSESSMENT

Many countries have in place a regulatory impact assessment (RIA) procedure that they apply to the design and implementation of existing and new regulations. The components most commonly found in RIAs are set out in Box 3, which combines the elements of a typical RIA process, based on those conducted in New Zealand and the United States.<sup>18</sup> Several of these steps may prove

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<sup>14</sup> Molinuevo, M. & Saez, S. (2014), *Regulatory Assessment Toolkit: A Practical Methodology for Assessing Regulation on Trade and Investment in Services*, Washington DC: The World Bank Group. Available at <http://documents.worldbank.org/curated/en/2014/03/19244904/regulatory-assessment-toolkit-practical-methodology-assessing>

<sup>15</sup> See OECD (2008), *Handbook for Undertaking Regulatory Impact Analysis*, available at <https://www.oecd.org/gov/regulatory-policy/44789472.pdf>

<sup>16</sup> Previous work carried out by the Pacific Economic Cooperation Council (PECC) discussed the type of regulatory disciplines that would be appropriate for three different types of service sectors, namely network services (telecom, transport, energy), professional services and cross-border electronic / data services. See PECC (2004), *Perspectives on Services Regulatory Issues*, available at <https://www.pecc.org/resources/trade-and-investment-1/192-perspectives-on-services-regulatory-issues>

<sup>17</sup> The authors of the World Bank *Regulatory Assessment Toolkit* (2014), *Ibid*, recognized this reality and included three sector specific Appendices to accompany the publication, on professional services, information technology-enabled services and financial services. Similar to the previous work by the PECC, the annexes discuss the specifics of each of these three sectors and the most appropriate types of regulation for each.

<sup>18</sup> U.S. Regulatory Impact Analysis: A Primer produced by the Office of Information and Regulatory Affairs as required by Executive Order 13563, Executive Order 12866, and OMB Circular A-4.1. Available at [https://www.whitehouse.gov/sites/default/files/omb/info/reg/reqpol/circular-a-4\\_regulatory-impact-analysis-a-](https://www.whitehouse.gov/sites/default/files/omb/info/reg/reqpol/circular-a-4_regulatory-impact-analysis-a-)

challenging from a resource and capacity perspective for policy makers and regulators in African LDCs and LICs, particularly those involving the definition of a baseline, the identification and quantification of the costs and benefits of regulatory alternatives to a given measure, calculation of discounted future costs and benefits, as well as the evaluation of the non-monetized costs and benefits of a given regulatory action. Assessment of risk may also prove challenging, as well as certain aspects of implementation, depending upon what type of regulatory measure is chosen.

### **BOX 3: STEPS INVOLVED IN CONDUCTING A REGULATORY IMPACT ASSESSMENT**

#### **Step 1: Describe the need for the regulatory action**

An analysis should begin with a detailed description of the need for the regulatory action and should include an explanation of how the regulatory action will meet that need. The RIA should explain whether the action is intended to address a significant market failure (e.g., externality, market power, and inadequate or asymmetric information) or to meet some other compelling public need. If the regulation is designed to correct a significant market failure, the RIA should describe the failure both qualitatively and (where feasible) quantitatively. If a regulation is required by statute or judicial directive, the RIA should clearly explain the specific authority, extent of agency discretion, and permissible regulatory instruments.

#### **Step 2: Defining the Baseline**

The baseline represents the agency's best assessment of what the world would be like absent the action. To specify the baseline, the agency may need to consider a wide range of factors and should incorporate the agency's best forecast of how the world will change in the future, with particular attention to factors that affect the expected benefits and costs of the rule.

#### **Step 3: Set the Time Horizon of Analysis**

When choosing the appropriate time horizon for estimating benefits and costs, agencies should consider how long the regulation being analyzed is likely to have economic effects. The timeframe for the analysis should cover a period long enough to encompass all the important benefits and costs likely to result from the rule.

#### **Step 4: Identify a Range of Regulatory Alternatives**

The agency should consider a range of potentially effective and reasonably feasible regulatory alternatives. The relevant alternatives might involve different approaches with distinct advantages and disadvantages. In considering which alternatives to discuss, an agency should reasonably explore which approaches are feasible and plausible ways of meeting the regulatory objective. An agency should give particular attention to identifying and assessing flexible regulatory approaches, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

**Step 5: Identify the Benefits and Costs of Regulatory Alternatives**

Agencies should identify the potential benefits and costs for each alternative and its timing. It may be useful to identify the benefits and costs in the following manner:

- Benefits and costs that can be monetized and their timing;
- Benefits and costs that can be quantified, but not monetized, and their timing;
- Benefits and costs that cannot be quantified.

In addition to the direct benefits and costs of each alternative, the list should include any important ancillary benefits and countervailing risk, that is those impacts that are typically unrelated or secondary to the purpose of the action.

The distributional effects should also be identified such as the health benefits that accrue principally to low-income groups, the regulatory costs imposed principally on low-income groups and the reductions in sales in one business that are matched by increases in sales by another, as well as the transfer of well-being among consumers through transfer payments. Distributional costs may include reductions in consumer and producer well-being due to regulation-induced price or quantity changes, an increase in illness or disability, or the consequence of increasing other safety and/or health risks.

**Step 6: Quantify and Monetize the Benefits and Costs**

The agency should use the best reasonably obtainable scientific, technical, economic, and other information to quantify the likely benefits and costs of each regulatory alternative. Presenting benefits and costs in physical units in addition to monetary units will improve the transparency of the analysis. For example, the benefits of a regulation that reduces emissions of air pollution might be quantified in terms of the number of premature deaths avoided each year; the number of prevented nonfatal illnesses and hospitalizations; the number of prevented lost work or school days; improvements in visibility in specific regions; and improvements in ecosystem health as measured by specific indicators (e.g. lake acidification). Some costs – such as countervailing risks – may also be quantified in similar terms before they are turned into monetary equivalents. As discussed in greater detail below, the agency should, to the extent feasible, estimate the monetary value of the benefits and costs of each regulatory alternative considered. Both benefits and costs are measured by the value that individuals place on the change resulting from a particular regulatory alternative.

**Step 7: Discount Future Benefits and Costs**

The benefits and costs of a regulatory action typically take place in the future. Moreover, benefits and costs may not be distributed across time in the same manner. For example, a common challenge in evaluating alternatives that have health-related consequences is to quantify the time lag between when an action would take effect and when the resulting change in health status will be observed. To provide an accurate assessment of benefits and costs that occur at different points in time or over different time horizons, an agency should use discounting. Agencies should provide benefit and cost estimates using both 3 percent and 7 percent annual discount rates expressed as a present value as well as annualized. These are “real” interest rates that should be used to discount benefits and costs measured in constant dollars. Unlike typical market interest rates, real rates exclude the expected rate of future price inflation.

**Step 8: Evaluate Non-quantified and Non-monetized Benefits and Costs and characterize uncertainty in Benefits and Costs through a Risk Assessment**

Sound quantitative estimates of benefits and costs, where feasible, are preferable to qualitative descriptions of benefits and costs because they help decision-makers to understand the magnitudes of the effects of alternative actions and compare across different types of consequences. However, some important benefits and costs (e.g., protection of human dignity, equity, or privacy, see Executive Order 13563, section 1(c)) may be difficult or impossible to quantify or monetize given current data and methods. Agencies should carry out a careful evaluation of non-quantifiable and non-monetized benefits and costs.

Regulatory analysis requires forecasts about the future. What the future holds, both in the baseline and under the regulatory alternative under consideration, is typically not known for certain. The important uncertainties connected with the regulatory decision should be analyzed and presented as part of the overall regulatory analysis. The goal of the agency's uncertainty analysis is to present both a central "best estimate," which reflects the expected value of the benefits and costs of the rule, as well as a description of the ranges of plausible values for benefits, costs, and net benefits, which informs decision-makers and the public of the degree of uncertainty associated with the regulatory decision.

#### **Step 9: Consultation**

The purpose of consultation is to provide confidence about the workability of proposals and ensure regulatory options have been properly considered. Agencies proposing new regulation must demonstrate consultation with affected parties on the problem definition, the range of feasible options, and the impacts of the options. All affected or interested parties should be consulted and consulted parties should be given enough time to respond on important issues. The magnitude of the proposal, including who is likely to be affected determines who and how to consult—more consultation is required if the proposal has wide-reaching impacts. In most cases, and particularly for significant proposals, there should be material consultation before the regulation is drafted. The draft regulation nevertheless provides another vital basis for consultation, both with affected parties and with government agencies.

#### **Step 10: Implementation of the Regulation**

RIA requires consideration of how the preferred option would be implemented if agreed. Choices around the implementation and enforcement of a regulatory option can have a major influence on expected compliance rates and whether the expected costs and benefits will materialize (i.e., the likely effectiveness of the regulation). Significant costs can be incurred during the implementation stage (such as the costs of monitoring and data collection) so key parameters should be included in the analysis of the costs and benefits of options. RIA should cover the entire implementation and enforcement stages of the policy by describing the impact of different choices around enforcement strategy on costs and benefits (expected compliance and effectiveness). Consideration should also be given as to how enforcement costs will be funded—although the appropriate level of analysis of implementation will depend on the stage of the policy development process and the magnitude of impact.

#### **Step 11: Monitoring, evaluation and review of the regulation**

The RIA must establish the agency's plans for monitoring, evaluating, and reviewing the performance over time. The key questions are:

- How will the Agency determine when and whether the regulatory changes have performed well?
- How will the Agency assess whether the preferred option continues to have a greater net benefit than alternatives?

It is also important that any new regulation is monitored and periodically reviewed to evaluate whether the option is the preferred solution to the particular policy problem over time.

Where alternative regulations to existing ones are considered (step 5 above), it is important to try and identify the pros and cons, together with the resource and capacity requirements for implementation of possible alternatives. The table in Appendix II sets out the advantages and disadvantages of various regulatory strategies. These are discussed more fully in the World Bank *Regulatory Assessment Toolkit* (2014). In practice, several of these may be fairly complex to implement and may require technical assistance. Simplicity would seem to be the best guide in the initial stages of implementing a regulatory impact assessment process by AU Members.

## C. ADAPTING THE REGULATORY IMPACT ASSESSMENT PROCESS TO THE AFRICAN UNION CONTEXT

If a full-blown regulatory impact assessment such as that summarized in Box 3 is too complex and costly for officials in AU Member States, which may often be the case given both expertise and resource constraints, then a simplified approach could be taken. The following seven steps are proposed as an adapted simplification of an RIA that would nonetheless serve as a useful basis for evaluation of the appropriateness of services regulations by AU Governments. These steps apply the general principles of good regulatory practice and should be considered together with the various options available in the regulatory toolkit.

- Step 1: *Identify the regulation in question* (from the regulatory inventory). Is it horizontal or sector-specific? How long has it been in place?
- Step 2: *Assess the reason for the regulation*. Is it necessary to correct a market failure? Or is it designed to fulfill a public policy goal?
- Step 3: *Evaluate if the regulation is proportional to its desired objective*. Can this objective be met otherwise with a less intrusive measure? Can the cost imposed by the measure be estimated in a general way, for example, through consultation with affected firms?
- Step 4: *Evaluate if the regulation is applied in a transparent manner*. Do all firms have information on the regulation available?
- Step 5: *Determine if and how the regulation affects trade*. Does it affect market access or national treatment? Does it violate the disciplines of existing trade agreements?
- Step 6: *Evaluate if there are other ways of achieving the same objective in a less trade-distortive manner*. Can another type of regulatory policy achieve the same effect without impacting on trade or while impacting less on trade? Are there examples of other developing countries that have addressed this same type of question in a similar sector of use in this evaluation?
- Step 7: *Evaluate if the necessary regulatory bodies exist for the RIA and if they are independent and able to implement the regulation effectively and without interference*. Do regulatory bodies need assistance in carrying out this task? If so, what type of assistance?

In terms of feasible options, the RIA document should identify these clearly. The decision about how to intervene may be as important as the decision about whether to intervene. A variety of options are available. These are likely to have very different implications, differing magnitudes of costs and benefits, differing distributional effects, and administrative requirements.

Options available to a government might include (but not be limited to) the following:

- I. **No government intervention:** This option involves relying on the market in conjunction with existing laws (general liability law). No government intervention is particularly important to consider when undertaking reviews of existing regulation. By holding individuals and firms responsible for their actions and requiring them to pay damages where liable, incentives may develop for individuals and firms to take appropriate action. Through legal remedies individuals should be able to enforce their rights rather than rely on government action to do so. However, this option is dependent upon a well-functioning judicial system.
- II. **Maintaining the status quo:** The status quo is a dynamic concept. It is the situation that will arise if current policy settings are maintained. Evaluation of the status quo should include consideration of the potential for a problem to "self-correct". The status quo should always be considered as an option, to ensure that alternatives are not chosen that would lead to worse outcomes than expected by maintaining the current policy settings. The status quo is frequently the option against which other options should be compared. However, it should not be chosen if this would result in deteriorating conditions for public welfare.
- III. **Extending current legislation:** In some circumstances, legislation with proven ability to overcome problems of the nature being addressed may already exist, but does not have sufficient coverage to deal with the circumstances under consideration. In such cases it may be more appropriate to expand coverage of this existing legislation than to attempt to create a new law. The major advantages of this approach lie in addressing the problem through a proven means, and ensuring consistency between the treatment of the same issue in different circumstances. This will not be feasible, however, if there is no existing regulation that already deals with a certain aspect of the problem.
- IV. **Increasing enforcement of existing regulation:** Another approach is to consider the implications of increasing the level of enforcement associated with the current regulation, rather than implementing new or amended provisions. It may be the case that existing regulations are adequate in and of themselves, but are not enforced adequately. The solution here may involve strengthening the existing regulatory body or giving it greater independence or resources to carry out its functions.
- V. **Carrying out information and education campaigns:** This approach acts to change the quality and level of the information available to the public, or to change its distribution. This can be achieved by regulating for certain information to be provided, or by government providing the information itself. This may involve requiring information about the attributes of a product, process, or situation be disclosed. These measures improve markets by allowing people to make decisions that better match their preferences. The main advantage of these strategies over some other approaches is that they allow individuals to choose what is best for themselves given the information available, rather than government imposing one solution on all. This requires the public to be fairly well informed and concerned about the problem at hand.
- VI. **Using a different set of economic instruments** (taxes, subsidies, and tradable property rights): Economic instruments seek to influence market behavior by altering the



relative prices of goods and services in a market, or by creating a market where none previously existed. Market behavior can be influenced either directly (for example, through a tax or user charge), or indirectly (for example, through controlling the level of supply). Economic instruments will generally require a regulatory basis. The two main types of economic instruments are:

- a. Taxes, charges, or subsidies: Government can alter private incentives (and therefore behavior) by taxing actions it wishes to discourage and subsidizing actions it wishes to encourage. For example, by taxing pollution or subsidizing education to correct for perceived negative or positive externalities.
- b. Tradable quota (marketable rights): These are a means of controlling, for example, the quantity of some externality produced, or the amount of a scarce resource taken. Under tradable quota systems, the government sets an overall maximum supply level for the outcome of a specific activity. Producers must then hold a right to produce or take, and may not produce or take any more than the level provided for by the quota. The quota becomes a valuable economic or property right. Auctioning quotas or providing for tradable quotas places strong incentives on the market to use resources efficiently, and ensure the quotas go to where they are valued the most. However, putting in place such a system requires a large amount of economic sophistication or it can be misused.

VII. **Opting for voluntary standards/codes of practice:** Changes in behavior can also be achieved through instruments such as voluntary standards and codes rather than obligatory regulations. The standards can be developed by industry or cooperatively with government as codes of practice or guidelines that seek to detail what is deemed to be acceptable practice. Voluntary codes maximize the potential for flexibility of response to allow easy adjustment in response to changes in the industry or occupation. They are best applied where there are strong occupational or industry bodies, where the implications of non-compliance do not pose significant or irreversible risks, and where non-compliance with the standard or code is visible (certification, for example, will tell consumers whether their provider complies with specified standards). To be successful, such voluntary standards / codes of practice must be implemented in societies where producers share similar values and are accustomed to 'self-policing'.

VIII. **Moving to self-regulation; and/or co-regulation:** Self-regulation can be defined as an arrangement in which an organized group (such as an industry association or professional body) regulates the behavior of its members, and where that organized group can impose sanctions. The advantages of self-regulation are that rules are more likely to be observed if they are made by insiders, and changes and updating can be more rapid. It is also cheaper for the government as the regulated group bears the costs of regulating (and also have strong incentives to minimize those costs). Compliance is achieved because those involved find it in their interest to obey the (non-binding) rules. This can be driven by a concern by individuals and firms about their reputation, or by peer pressure. With co-regulation, the regulatory role is shared between government and an industry body. Co-regulation can range from simple endorsement of industry self-regulation, to providing legislative backing to privately defined rules when industry lacks sufficient sanctions to ensure compliance, thus bordering on traditional regulation. Co-regulation is used especially for professional services (e.g. doctors, lawyers, accountants, etc.). In such cases, the legislature may delegate regulatory authority to an organization representing members practicing that occupation. The professional body then makes rules, levies charges, and

recognizes qualified members. These regulations can have the same force and legal authority as if the government itself carried them out. In this situation attention needs to be taken to ensure the interests of consumers are given prominence, and that opportunities for anti-competitive practices are minimized.

## VII. Conclusion

This paper is a companion to the study on *Principles and Best Practices for Domestic Regulation of Services (December 2016)*. Together, the two papers constitute a comprehensive discussion of the role of regulations on services in the domestic economy, elaborating on how such regulations can affect international trade and economic efficiency as well as development goals in both a positive and negative way. Regulations are in fact the heart of services.

To be able to evaluate the effectiveness of services regulations adequately, it is necessary to have a complete picture of the regulatory panorama in the domestic economy. This can only be done through carrying out a comprehensive audit of measures affecting services and canvassing them in an inventory.

This paper carries out a gap analysis of the suitability of four existing templates for the purpose of constructing inventories of measures affecting services trade by AU Members. With suggested adaptations, it presents the positive list GATS template, the negative list template, the APEC Individual Action Plan template, and the Pacific Island Forum PACER Plus template. The pros and cons for each of the four template profiles presented are discussed, and the paper recommends the latter template as the most appropriate and useful for the AU context. A common template will facilitate AU Members in putting together national inventories of measures on services. In turn, the information in these inventories will serve two purposes: first, to help each AU Government identify the content of its domestic regulatory framework; and second, to facilitate its participation in the CFTA services negotiations.

Lastly, the paper explains how the information contained in such inventories of measures can serve as the basis for carrying out a national regulatory audit or regulatory impact assessment process and what is involved in such a process. The rationale for this undertaking is compelling, namely to ensure that regulations are appropriate for the purpose for which they were designed and fulfill a legitimate function, while being the least trade restrictive possible.

# Appendix I

## INFORMATION ON SERVICES MEASURES: SUGGESTED TEMPLATE FOR AFRICAN UNION MEMBERS

Regulations and Measures affecting Services and Services Trade

**TABLE 8: HORIZONTAL MEASURES**

Policy area(s)	Existing measure(s)	Brief description of existing measure(s) and what modes of supply are affected.	Other comments. Please also indicate reviews underway, or changes or revisions planned
<b>Foreign exchange</b>	Are there regulations or a Law in place covering Foreign Exchange Control?	What do these regulations and/or Law contain?	
<b>Foreign investment</b>	<p>Is there an Act or Law covering Foreign Investment?</p> <p>Are there any Economic Needs Test (ENTs) specified within this Act or Law?</p> <p>Are there specific sectors reserved exclusively for national investors?</p>	<p>Are there any Economic Needs Test (ENTs) specified within this Act or Law? If so, what are the criteria?</p> <p>Are there specific sectors reserved exclusively for national investors? If so, indicate these sectors.</p>	

<b>Immigration and Labor</b>	<p>Is there an Act or Law covering Immigration?</p> <p>Is there an Act relevant to Employment or Labor Policy?</p>	<p>Briefly describe the content of these Acts. Does the Immigration Act restrict the entry of foreign workers and if so, how?</p> <p>Is there a preference for national citizens in the Employment or Labor Act? Are there any requirements for training programs by foreign firms?</p> <p>For how long are work permits granted?</p> <p>Which categories of foreign workers are specified for these work permits?</p> <p>What criteria have to be fulfilled in order to obtain such permits by foreign workers?</p>	
<b>Land acquisition/ownership</b>	<p>Is there an Act or Law governing land use?</p>	<p>Briefly describe content of this Act or Law. Is any land reserved for nationals exclusively or off limits to foreign investors?</p>	
<b>Subsidies</b>	<p>Are there any regulations that cover government subsidies?</p>	<p>Briefly describe content of this Act or Law.</p> <p>Do these regulations mandate subsidies for Nationals only, and if so, in what sectors (for example in education)?</p>	
<b>Environment regulations</b>	<p>Is there an Act or Law relative to the Environment that affects services operations?</p>	<p>Briefly describe content of this Act or Law.</p>	

<b>Other</b>	Are there any other relevant Acts or Laws affecting services investment and operations?	Briefly describe content of this Act or Law.	
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**TABLE 9: SECTORAL MEASURES**

Note: If the sector is not regulated, please indicate with NR under existing measures

Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
<b>I. BUSINESS SERVICES</b>										
A. Professional Services		Are there specific laws and regulations governing professional services as a whole? Or only specific to individual professions?	Briefly describe content of this Act or Law. To which professions does it apply? Are foreign professionals specifically limited in terms of numbers or qualification?						Are there any changes to the Law or Act under review?	

<sup>19</sup> List of sectors and sub-sectors, including CPC codes, from WTO Doc. MTN.GNS/W/120 (1991), "Services Sectoral Classification List," available at [www.wto.org/english/tratop\\_e/serv\\_e/mtn\\_gns\\_w\\_120\\_e.doc](http://www.wto.org/english/tratop_e/serv_e/mtn_gns_w_120_e.doc).

<sup>20</sup> See <http://unstats.un.org/unsd/cr/registry/regcst.asp?Cl=9&Lg=1> for details.

<sup>21</sup> See [http://www.wto.org/english/tratop\\_e/serv\\_e/cbt\\_course\\_e/c1s3p1\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/cbt_course_e/c1s3p1_e.htm) for details.

Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
			Is a professional registration required to practice?							
a. Legal Services	861	Is there an Act or Law covering Lawyers?	Same for all below.							
b. Accounting, auditing and book-keeping services	862	Is there an Act or Law covering Accountants?								
c. Taxation Services	863	Is there an Act or Law covering Tax Preparers?								
d. Architectural Services	8671	Is there an Act or Law covering Architects?								
e. Engineering	8672	Is there an Act or Law covering Engineers?								
f. Integrated engineering services	8673									
g. Urban planning and landscape architecture services	8674	Is there an Act or Law covering Urban Planners?								



Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
<i>h. Medical and dental services</i>	9312	Is there an Act or Law covering Doctors and Dentists?								
<i>i. Veterinary services</i>	932	Is there an Act or Law covering Veterinarians?								
<i>j. Services provided by midwives, nurses, physiotherapists,</i>	93191	Is there an Act or Law covering Nurses?								
<i>k. Other</i>										
<b>B. Computer and Related Services</b>		Are there any regulations in the area of computer services, for example, data localization requirements?								
<i>a. Consultancy services related to installation of computer hardware</i>	841									
<i>b. Software implementation services</i>	842									

Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
c. Data processing services	843									
d. Data base services	844									
e. Other	845+849									
<b>C. Research and Development Services</b>										
a. R&D services on natural sciences	851									
b. R&D services on social sciences and humanities	852									
c. Interdisciplinary R&D services	853									
<b>D. Real Estate Services</b>										
a. Involving own or leased property	821									
b. On a fee or contract basis	822									
<b>E. Rental/Leasing Services without Operators</b>										
a. Relating to ships	83103									
b. Relating to aircraft	83104									

Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
c. <i>Relating to other transport equipment</i>	83101+ 83102+ 83105									
d. <i>Relating to other machinery and equipment</i>	83106- 83109									
e. <i>Other I.</i>	832									
F. Other Business Services		Is this sector regulated? If not, please indicate with an NR* in all relevant sub-sectors.								
a. <i>Advertising services</i>	871									
b. <i>Market research and public opinion polling services</i>	864									
c. <i>Management consulting service</i>	865									
d. <i>Services related to management consulting</i>	866									
e. <i>Technical testing and analysis</i>	8676									

Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
f. Services incidental to agriculture, hunting and forestry	881									
g. Services incidental to fishing	882									
h. Services incidental to mining	883+5115									
i. Services incidental to manufacturing (except for 88442)	884+885 (except for 88442)									
j. Services incidental to energy distribution	887									
k. Placement and supply services of Personnel	872									
l. Investigation and security	873									
m. Related scientific and technical consulting services	8675									
n. Maintenance and repair of equipment (not including maritime vessels,	633+ 8861-8866									

Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
<i>aircraft or other transport equipment)</i>										
<i>o. Building-cleaning services</i>	874									
<i>p. Photographic services</i>	875									
<i>q. Packaging services</i>	876									
<i>r. Printing, publishing</i>	88442									
<i>s. Convention services</i>	87909*									
<b>2. COMMUNICATION SERVICES</b>										
A. Postal Services	7511	Is there a Law governing Postal Services?	Summarize content of the Law. Is this a domestic monopoly?							
B. Courier Services	7512	Is there an Act or Law relevant to Courier Services?	If so, summarize content and how it affects foreign service providers.							
C. Telecommunications		Is there a current Telecommunications Act or Law?	Summarize content of the Telecommunications Act or Law and what it covers. Be as specific as possible in							Indicate any proposals for future changes or revisions to the existing Act or Law.

Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
			terms of the services mentioned.							
D. Audiovisual Services		Is there an Act or Law relevant to Audiovisual Services?	If so, summarize content and how it affects foreign service providers.							
a. <i>Motion picture and video tape production and distribution services</i>	9611									
b. <i>Motion picture projection services</i>	9612									
c. <i>Radio and television services</i>	9613									
d. <i>Radio and television transmission services</i>	7524									
e. <i>Sound recording</i>	n.a.									
<b>3. CONSTRUCTION AND RELATED ENGINEERING</b>										
A. General Construction Work for Buildings	512	Is there an Act or Law relevant to Urban Planning and	Is construction work limited to national firms? Can foreign							Are there any changes to the Law

Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
		Construction? Is there a Road or Traffic Act?	service providers bid and participate?							under review?
B. General Construction Work for Civil Engineering	513	Is there an Act or Law relevant to Urban Planning and Civil Engineering?	Is construction work limited to national firms? Can foreign service providers bid and participate? Are there licensing requirements?							
C. Installation and assembly work	514+516									
D. Building completion and finishing work	517									
<b>4. DISTRIBUTION SERVICES</b>		Is there any Law or Regulation affecting distribution services?								Are there any changes to the Law under review?
A. Commission Agents' Services	621									
B. Wholesale Trade Services	622		Are there limitations on foreign firms or							

Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
			service providers participating in distribution activities?							
C. Retailing Services	631+632 6111+6113+ 6121									
D. Franchising	8929									
<b>5. EDUCATION SERVICES</b>		Is there a national Education Act?	What body is in charge of regulating Education and approving Curricula?							Are there any changes to the Law under review?
A. Primary Education Services	921		Does the Act allow for foreign-owned primary schools?							
B. Secondary Education Services	922		Does the Act allow for foreign-owned secondary schools?							
C. Higher Education Services	923		Does the Act allow for foreign-owned universities?							
D. Adult Education Services	924		Does the Act allow for foreign-owned							



Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
			Adult Education Services?							
E. Other Education Services	929									
<b>6. ENVIRONMENTAL SERVICES</b>										
A. Sewage Services	9401	Is there an Environmental Act?	What does the Act specify? Can foreign service providers participate in sewage, refuse and sanitation services?							
B. Refuse Disposal Services	9402									
C. Sanitation and Similar Services	9403									
<b>7. FINANCIAL SERVICES</b>										
A. All insurance and insurance-related services	812**	What Law or Act regulates insurance services?	Are licenses required for insurance companies to operate? What body is responsible? Are foreign insurers allowed? Under what						Are there any changes to the Law under review?	

Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
			conditions? What prudential supervision requirements apply?							
a. Life, accident and health insurance services	8121	Same as above								
b. Non-life insurance services	8129	Same as above								
c. Reinsurance and retrocession	81299**	Same as above								
d. Services auxiliary to insurance (broking and agency services)	8140	Same as above								
B. Banking and Other Financial Services (excl. Insurance)		What Law or Act regulates banking services?	Are licenses required for banks to operate? What body is responsible? Are foreign banks allowed? Under what conditions? What prudential supervision requirements apply?						Are there any changes to the Law under review?	
a. Acceptance of deposits and other	81115-81119	Same applies to all below; no need to								

Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
<i>repayable funds from the public</i>		list all sub-sectors if the Financial Act or Law applies to all in the same way								
<i>b. Lending of all types</i>	8113									
<i>c. Financial leasing</i>	8112									
<i>d. All payment and money transmission</i>	81339**									
<i>e. Guarantees and commitments</i>	81199**	Same applies to all below; no need to list all sub-sectors if the Financial Act or Law applies to all in the same way								
<i>f. Trading for own account or customers, of the following:</i>										
• money market instruments (cheques, bills, certificates of deposits, etc.)	81339**									
• foreign exchange	81333									

Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
• derivative products incl., but not limited to futures and options	81339**									
• exchange rate and interest rate instruments, incl. products such as swaps, forward rate agreements etc	81339**									
• transferable securities	81321*									
• other negotiable instruments and financial assets, including bullion	81339**									
g. <i>Participation in issues of all kinds of securities, incl. underwriting and placement as agent</i>	8132	Same applies to all below; no need to list all sub-sectors if the Financial Act or Law applies to all in the same way								
h. <i>Money broking</i>	81339**									
i. <i>Asset management, such as cash or portfolio management,</i>	8119+** 81323*									

Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
<i>investment and pension fund management</i>										
<i>j. Settlement and clearing for financial assets, incl. securities, derivative products, and other negotiable instruments</i>	81339** or 81319**									
<i>k. Advisory and other auxiliary financial services on all the</i>	8131 or 8133									
<i>l. Provision and transfer of financial information, and financial data processing and related software by providers of other financial services</i>	8131									
C. Other										
<b>8. HEALTH RELATED AND SOCIAL SERVICES (other</b>		Is there an Act or Law that regulates Health Services?								Are there any changes to the Law

Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
than those listed in I.A.h-j)										under review?
A. Hospital Services	9311	Same as above	Registration with Solomon Islands Nursing Council, Ministry of Health.							
B. Other Human Health Services	9319 (other than 93191)	Same as above	Registration with Solomon Islands Nursing Council, Ministry of Health.							
C. Social Services	933									
D. Other										
<b>9. TOURISM AND TRAVEL RELATED</b>		Is there an Act or Law that regulates Tourism?	What body / bodies are responsible for implementing this Law?							Are there any changes to the Law under review?
A. Hotels and Restaurants (incl. Catering)	641-643	Same as above	Are licenses required for hotels / restaurants to operate? Who grants these licenses?							

Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
			<p>Are there any ENTs in place?</p> <p>Are there any restrictions on foreign firms providing hotel and restaurant services? On foreign workers?</p>							
B. Travel Agencies and Tour Operators Services	7471	Same as above	<p>Are licenses required for Travel Agencies/ Tour Operators? Who grants these licenses? Are there any ENTs in place?</p> <p>Are there any restrictions on foreign firms? On foreign workers?</p>							
C. Tourist Guides Services	7472	Same as above								
<b>10. RECREATIONAL, CULTURAL AND</b>		Is there an Act or Law that regulates								

Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
<b>SPORTING SERVICES</b>		Recreational, Cultural and Sporting Services?								
A. Entertainment Services (including Theatre, Live Bands and Circus)	9619									
B. News Agency Services	962									
C. Libraries, Archives, Museums and Other Cultural Services	963									
D. Sporting and other Recreational Services	964									
<b>II. TRANSPORT</b>										
A. Maritime Transport		Is there an Act or Law that regulates Maritime Transport? --as applied to each sub-sector below	Are licenses required for shipping? What body is responsible for implementing the Law? Are there restrictions on foreign ships for maritime transport? Employment of foreign seafarers?						Are there any changes to the Law under review?	



Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
			Registration of vessels?							
a. Passenger transportation	7211									
b. Freight transportation	7212									
c. Rental of vessels with crew	7213									
d. Maintenance and repair of vessels	8868**									
e. Pushing and towing	7214									
f. Supporting services for maritime transport	745**		Are customs clearance activities reserved for nationals?							
B. Internal Waterways Transport		Is there an Act or Law that regulates Internal Waterways Transport?  --as applied to each sub-sector below	Are licenses required for this internal transport? What body is responsible for implementing the Law?  Are there restrictions on foreign ships for cabotage?  Employment of							Are there any changes to the Law under review?

Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
			foreign seafarers? Registration of vessels?							
a. Passenger transportation	7221									
b. Freight transportation	7222									
c. Rental of vessels with crew	7223									
d. Maintenance and repair of vessels	8868*									
e. Pushing and towing	7224									
f. Supporting services for internal waterway transport	745**									
C. Air Transport		Is there an Act or Law that regulates Air Transport?  --as applied to each sub-sector below	Are licenses required for Air transport? What body is responsible for implementing the Law? Are there restrictions on foreign airlines? Employment of							Are there any changes to the Law under review?

Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
			foreign workers in this sector?							
a. Passenger transportation	731									
b. Freight transportation	732									
c. Rental of aircraft with crew	734									
d. Maintenance and repair of aircraft	8868**									
e. Supporting services for air transport	746									
D. Space Transport	733									
E. Rail Transport Services		Is there an Act or Law that regulates Air Transport?  If so, how is it applied to each sub-sector below?	Are licenses required for Rail transport? What body is responsible for implementing the Law? Are there restrictions on foreign companies? Employment of foreign workers in this sector?						Are there any changes to the Law under review?	

Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
a. Passenger transportation	7111									
b. Freight transport transportation	7112									
c. Pushing and towing services	7113									
d. Maintenance and repair of rail transport equipment	8868**									
e. Supporting services for rail transport services	743									
F. Road Transport Services		Is there an Act or Law that regulates Air Transport?  If so, how is it applied to each sub-sector below	Are licenses required for any type of Road transport? What body is responsible for implementing the Law?  Are there restrictions on foreign companies? Employment of foreign workers in this sector?						Are there any changes to the Law under review?	

Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
a. Passenger transportation	7121+7122									
b. Freight transportation	7123									
c. Rental of commercial vehicles with operator	7124									
d. Maintenance and repair of road transport equipment	6112+8867									
e. Supporting services for road transport services	744									
G. Pipeline Transport										
a. Transportation of fuels	7131									
b. Transportation of other goods	7139									
H. Services Auxiliary to All Modes of Transport		Is there an Act or Law that regulates these Auxiliary Transport Services?	What body is responsible for implementing this Law?						Are there any changes to the Law	

Sectors and sub-sectors <sup>19</sup>	CPCprov <sup>20</sup>	Existing measure(s)	Brief description of existing measure(s)	Measure applies to which mode of supply? <sup>21</sup>				Is the measure discriminatory (D) or non-discriminatory (N), i.e. does it affect all service providers in the same way?	Does the measure affect Market Access (MA)/ or National Treatment (NT)?	Other comments. Indicate reviews to regulations underway, or changes planned
				1	2	3	4			
			Is there a domestic monopoly on any of the Auxiliary Transport Services listed below?							under review?
a. <i>Cargo-handling services</i>	741									
b. <i>Storage and warehouse services</i>	742									
c. <i>Freight transport agency services</i>	748									
<b>I2. OTHER SERVICES NOT INCLUDED ELSEWHERE</b>	95+97+98+99									

Notes:

(1) \* indicates that the service specified is a component of a more aggregated CPC item specified elsewhere in this classification list.

(2) \*\* indicates that the service specified constitutes only a part of the total range of activities covered by the CPC concordance.

**NR\*** No specific regulations in place; sector only subject to horizontal measures.

# Appendix II

## ADVANTAGES AND DISADVANTAGES OF VARIOUS REGULATORY STRATEGIES

Regulatory strategy	Main characteristic	Main advantages	Main disadvantages
Direct action by the state	State is responsible for providing services for consumers or facilities for businesses	Ensures a particular level of investment in goods or services with a strong public good component	Government failure can be as big a problem as market failure
Command and control	Regulation usually involves imposition of binding standards and their enforcement by legal sanctions	Bans particular types of conduct, ensuring relatively certain and immediate effect	Regulated businesses can capture process; introduces rigidity into the system; may create barrier to entry; difficult and costly to enforce
Incentive-based regimes	Uses taxes or subsidies to encourage services providers to act in accordance with the public interest	Reduces the danger of regulatory capture; encourages firms to limit harmful conduct as much as possible	Requires information to set tax or subsidy at correct level
Competition law	Can ensure level of competition in individual markets that results in supply at socially optimal levels	Can be applied across the board to multiple sectors, thus creating economies of scale in regulation; does not unduly intrude into firms' private decision-making processes	Flexibility may create uncertainty
Franchising (concessions)	Replaces competition within the market with competition for the market	Effective regulatory tool for activities that display strong natural monopoly characteristics; includes payment of a license fee or negotiation of a minimum subsidy, which can have fiscal benefits for the government	Requires high level of governance capacity
Disclosure regulation	Requires firms to make public information regarding the quantity, quality, and price of their outputs, as well as in some cases the processes followed during production	Relatively light-handed government strategy; once information is publicly available, consumers can make informed choices that conform to their individual levels of risk perception and tolerance	Costs of disclosing and processing information may be significant; must be combined with additional measures
Self-regulation	Group of firms or individuals determines its own membership and behavior	Less intrusive than other state-based mechanisms	Provides incentive to use standards of conduct or licensing requirements as barriers to entry

Source: Molinuevo, M. & Saez, S., *Regulatory Assessment Toolkit: A Practical Methodology for Assessing Regulation on Trade and Investment in Services*, Washington DC: The World Bank Group, 2014, page 9, <http://documents.worldbank.org/curated/en/2014/03/19244904/regulatory-assessment-toolkit-practical-methodology-assessing>

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