



# Disciplines on domestic regulation under the GATS

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Trade in Services Division  
WTO

# Issues

- ▶ Why do governments regulate economic activities?
  - ▶ Why is regulation of *services* especially important?
  - ▶ How does GATS ensure trade disciplines will not stop a government from achieving its valid regulatory objectives?
  - ▶ What GATS disciplines on domestic regulation exist, and are the proposals?
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# Governments often regulate for economic reasons

- ▶ **To counter abuse of market power**
  - leads to anti-competitive behaviour (e.g. price fixing)
- ▶ **To counter externalities**
  - **Negative** – costs imposed on third parties (e.g. air pollution)
  - **Positive** – benefits extended to third parties who do not pay for them (e.g. public health measures)
- ▶ **To counter information asymmetries**
  - one party has more or better information than the other (e.g. medical doctor and patient)

# Governments also regulate to redistribute, or for many other non-economic objectives

- ▶ universal access (e.g. utility coverage)
- ▶ income redistribution
- ▶ ethical concerns (e.g. human, animal plant life or health)
- ▶ environmental protection
- ▶ etc.

# Why do services sectors often need special regulation?

- ▶ Many services are prone to market failure:
  - Infrastructure services (eg. telecoms) depends on very large fixed cost investment – **owner of essential facilities can block access**
  - Professional services, **customer typically does not have expertise to evaluate quality of the service** until after it has been consumed
  - Excessive risk taking by financial services suppliers due to **problems of “moral hazard”**

# But what about regulatory failure?

- ▶ Not all market failures justify intervention by government authorities.
- ▶ Regulation has its own costs – compliance costs for firms, administrative costs for governments, might affect competition leading to less choice/higher prices for consumers.
- ▶ Regulatory capture is a risk
- ▶ **Could regulation sometimes make things worse?**

# Services trade barriers and regulation under the GATS

- ▶ Not all regulations are considered to be “barriers” or measures that need to be scheduled
- ▶ GATS recognizes **the right to regulate** and to introduce new regulations
- ▶ Only measures falling under **Article XVI (market access)** and **Article XVII (national treatment)** are subject to progressive liberalization through negotiated specific commitments.

# Trade Barriers & Domestic Regulation



## Trade Barriers

Market Access  
(Article XVI)

Mainly quantitative restrictions

National Treatment

## Domestic Regulation

Article VI

Non-discriminatory

qualitative requirements

Regulatory autonomy of  
Members subject to GATS

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