

5th Mises Seminar

Sestri Levante – 3-5 October 2008

GATS and Domestic Regulatory Reform: Analysing the Linkages

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Domestic Regulation in GATS and South Asia: Integrating the Domestic Reform Agenda with GATS Disciplines

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1. Introduction

Trade in services is becoming an important component of the trade flows of South Asian countries. In recent years, the region is also seeing a rise in services led FDI. At the domestic level, the services sector occupies the maximum share of GDP in all South Asian countries. Reforms in the services sector are an important component of the structural policy reforms of the region. A range of service sectors such as telecommunications, financial services, distribution and energy are being opened to foreign suppliers. While most of the liberalization is occurring autonomously, increasingly, regional and multilateral trade agreements are also contributing to service sector liberalization.

At the regional level, South Asian countries have operationalised the South Asian Free Trade Agreement (SAFTA) from January 2006. While it does not include trade in services, the Declaration of the Heads of State in the 14th SAARC Summit, concluded in April 2007, stressed on the need to integrate trade in services within SAFTA and called for the finalisation of a services agreement at the earliest. In addition, select South Asian countries have concluded ambitious bilateral trade agreements that include trade in services, for example the India-Singapore Comprehensive Economic Cooperation Agreement.

At the multilateral level, many of the South Asian countries, being Members of the WTO, are liberalizing their service sectors under the framework of the General Agreement on Trade in Services (GATS). The GATS framework for liberalising trade in services is comprised of a set of rules, which apply to services sectors that Members agree to liberalise (through market access and national treatment limitations/conditions) by listing them in their schedule.¹ Domestic Regulation (DR) is one of the GATS rules that seeks to increase transparency, predictability and objectivity of national level regulations that impact trade in services. Since the GATS text was an incomplete text at the time of its adoption at the conclusion of the Uruguay Round, a few of these rules, namely Domestic Regulation (Article VI.4), Emergency Safeguard Measures (Article X), Government Procurement (Article XIII) and Subsidies (Article XV), continue to be negotiated in the Doha Round.

The DR negotiations, similar to other rules negotiations, are in progress since the past 13 years and have been the most successful amongst the four rules negotiations. Since the Hong Kong Ministerial Conference in December 2005, a new momentum was generated in DR negotiations. In

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¹If no market access or national treatment limitation exist, the sector is considered fully liberalised. If the sector is not listed or if it is listed as completely unbound, the sector is considered not liberalised within GATS.

2006, a number of countries submitted proposals and draft texts.² Since 2007, after resumption of the stalled Doha talks, a draft text on DR is in circulation amongst member countries.³ The draft text attempts to introduce further disciplines on technical standards, qualification requirements and procedures, and licensing requirements and procedures.⁴ The Article VI.4 disciplines are likely to be the first set of horizontal disciplines, amongst the rules negotiations, to be ready for adoption, when the Doha Round concludes.

While the negotiations have continued, in parallel, albeit de-linked, South Asian countries have pursued their domestic reform agenda. Since the 1990s, the countries of the region are moving on the path of liberalisation, privatisation and deregulation, in varying degrees. To an extent the reform processes of the region appear similar, the difference typically being that of the extent and speed of reform. More ambitious South Asian countries are also revisiting the provision of public services. Broadly, these measures have similar motives - increasing competitiveness, instituting regulatory discipline and encouraging private participation, amongst others.

In spite of the similarity in the objectives of the DR rules in GATS and that of domestic reforms at the national level, there is uncertainty regarding how these rules apply in the domestic context. In situations where Members are aware of the specific reform measures that are required to implement these disciplines, they are unable to benchmark their current state of DR to what is expected. This chapter is a preliminary attempt towards the same. Section 1 provides a background to the theme of the chapter. Section 2 comprises of a brief overview of DR disciplines in GATS. In Section 3, the disciplines are linked to generally accepted indicators of good regulation. In Section 4, the performance of South Asian countries is benchmarked with these indicators. In the concluding section, policy options and future research areas are suggested.

It is important to note that the scope of the chapter is restricted to suggesting approaches by which South Asian countries could link their domestic reforms with GATS disciplines. The problems associated with implementing GATS disciplines have not been covered. This in no manner suggests that GATS disciplines are ideal instruments for policy reform. A substantial amount of critical literature argues that GATS restricts the policy space of countries and is, for the most part, focussed on promoting liberalisation and deregulation, including that of essential services. In addition, the GATS disciplines are considered to be unsympathetic to the nascent stage of regulatory structures in developing countries. The chapter, however, does not delve into these debates. Further, given the constraints, the chapter also does not focus on sector level regulations (telecom, energy, banking etc), sub-federal (state-level, independent regulatory bodies etc) or horizontal regulations (competition policy, consumer protection, standards etc) in detail. Instead it relies on broad indicators of good governance, which are also subject to criticism on account of alleged ideological

²The ACP (African, Caribbean and Pacific Countries) proposed a draft text focussed on pro-development principles. Chile, India, Mexico, Pakistan, Peru and Thailand proposed a draft text on Qualification Requirements and Procedures. China and Pakistan as well as Australia, Chile, Hong Kong China, Korea, New Zealand, Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu also proposed a draft text covering the entire Article VI.4. The US proposed stricter horizontal transparency disciplines that aimed to make it mandatory for governments to seek comments from foreign services providers prior to enacting a legislation that impacted them.

³'Draft Disciplines on Domestic Regulation Pursuant to GATS Article VI.4' Informal Note by the Chairman of the Working Party on Domestic Regulation circulated on 18 April 2007, as Room Document (2639).

⁴ Refer Annexure 7 of this chapter for a brief summary of the draft text

bias.⁵ In addition, the analysis in the chapter is restricted to GATS and does not focus on regional trade agreements.

2. The DR Disciplines in GATS: An Overview

The scope of the disciplines

The scope of the domestic regulation disciplines is determined largely by the scope of the GATS itself. Article I of the GATS states that the agreement covers the entire gamut of government policies that impact trade in services of scheduled sectors, which include measures taken by central, regional or local governments and authorities; and non-governmental bodies in the exercise of powers delegated by governments. The disciplines apply to measures that are not only specific to trade in services, but also those that affect trade in services, in general. These may include regulations relating to environment, labour rights or rural development.⁶

Specifically, within Article VI.4 of DR, the negotiations have focused on developing disciplines on requirements and procedures relating to technical standards, qualifications and licensing that may impact trade in services.

The requirements posed by Article VI

The primary objective of Article VI is to ensure that Members, in scheduled services sectors, apply measures reasonably, objectively and impartially (Article VI.1). The disciplines require Members to ensure that the judicial, arbitral and administrative procedures are also objective, impartial and efficient (Article VI.2). Members are required to maintain reasonability of time in authorization processes (Article VI.3). Members are also required to specifically ensure that domestic regulations are not more burdensome than necessary, not in themselves a restriction to trade and should not nullify a Member's commitments (Article VI.4, additional disciplines being negotiated). In sectors where regulations have not been developed, or are in process of being developed, Members are restrained from applying measures that could not have been reasonably expected at the time the commitments were made. Finally, Members are also asked to provide for adequate procedures to verify the competence of professionals of other Members (Article VI.6).

In the GATS 1994, Article VI.4 mandates the Council for Trade in Services (CTS) to develop further disciplines on technical standards, qualification requirements and procedures, and licensing

⁵ Given the paucity of indicators, alternatives are seldom available.

⁶According to OECD (2002) the following different types of measures are covered by GATS and specifically the DR disciplines:
 Measures of general application which pertain to or affect the operation of the GATS agreement (Article III.1 and III.4)
 Laws, regulations or administrative guidelines which significantly affect trade in services covered by...specific commitments (Article III.3)
 Measures of general application affecting trade in services in sectors where specific commitments are undertaken (Article VI.1)
 Administrative decision affecting trade in services (Article VI.2(a))
 Authorisation required for the service on which a specific commitment has been made (Article VI.3)
 Measures relating to qualification requirements and procedures, technical standards and licensing requirements. (Article VI.4).

requirements and procedures (henceforth called DR requirements and procedures),⁷ such that they are based on an objective and transparent criteria, not more burdensome than required and not in themselves a restriction to supply a service (Article VI.4).

Other Articles apart from Article VI

While the DR mandate is specifically listed in Article VI, other articles also deal with DR issues, particularly Article III on Transparency and Article VII on Recognition. Article III requires members to publish and make available all relevant information pertaining to the agreement, including international agreements. Members are required to respond to requests of other members. Enquiry points are mandated to provide specific information. Under Article VII, Members are encouraged to recognize certificates and licenses granted in another country, through harmonization or other alternatives. In addition, Members are encouraged to offer an opportunity to third countries to enter into mutual recognition agreements that they negotiate with select countries. Members are also mandated to base recognition on multilaterally agreed criteria, wherever appropriate.

Annexes

DR disciplines are specifically negotiated in the sectoral annexes to the GATS. These include financial services, telecommunication services and accountancy services amongst others. A cursory glance at these disciplines reveals that they are generally stricter than those in the main text. For instance the accountancy disciplines are stronger than GATS general obligations specifically with reference to proportionality, necessity, use of international standards and recognition.⁸

Thus, GATS imposes DR disciplines through various Articles and Annexes, and the same is not restricted to Article VI alone. Hence member countries need to factor in the disciplines beyond Article VI while implementing the same.

Coverage of private measures

It is yet uncertain whether DR disciplines apply to standards set by private associations of suppliers, which exist in several countries, particularly in professional services such as legal, accounting and architecture. Private standards may contain clauses that may be restrictive for developing country professionals to fulfil, resulting in a de-facto inability to access the market. It is argued that private standards are not subject to GATS disciplines since governments do not institute them. In addition, since private requirements in goods trade such as those relating to ecolabels, labour standards etc are not subject to GATT disciplines, the same exception should apply to services as well. However,

⁷The Informal Note by the Chairman of the Working Party on Domestic Regulation, circulated amongst members on 18 April 2007, as a Room Document (2639) defines: 'technical standards' as measures that lay down the characteristics of a service or the manner in which it is supplied. Technical standards also include procedures relating to the enforcement of such standards; 'qualification requirements' as substantive requirements relating to the competence of a natural person to supply a service, and which are required to be demonstrated for the purpose of obtaining authorization to supply a service; 'qualification procedures' as administrative or procedural rules that a natural person must adhere to in order to demonstrate compliance with qualification requirements, for the purpose of obtaining authorization to supply a service; 'licensing requirements' as substantive requirements, other than qualification requirements, with which a natural or juridical person is required to comply in order to obtain, amend or renew authorization to supply a service; and 'licensing procedures' as administrative or procedural rules that a natural or a juridical person seeking authorization to supply a service, including the amendment or renewal of a licence, must adhere to in order to demonstrate compliance with licensing requirements.

⁸Trachtman (2003). Refer this chapter for extensive comparison of GATS and GATT.

this argument is contestable. Firstly, in GATT, sellers cannot set private standards and mandate domestic buyers to accept the same. For example, it is unlikely for domestic sellers of leather shoes in Europe to come together and mandate standards on their buyers. However suppliers of accounting services, through an association can come together and mandate standards for their buyers. Typically in such situations, the government authorises the private association to set standards for fulfilling public interest objectives or quality concerns. Hence this can be considered as a delegation of power by the government, the implication being that it would no longer be excluded from GATS disciplines. In terms of domestic regulatory reform in South Asia, it may be necessary to seek further clarity on this issue, since this will assist governments to determine its intervention strategy relating to private associations of services suppliers.

2. DR Disciplines and Good Regulation: The Linkages

The starting step towards harnessing GATS in domestic reform measures is to look for regulatory guidelines emerging out of the text of the agreement. For example the Harrison Institute analyses how the interpretation of the word ‘objective’ used in Article VI.4 can be translated into five meanings: not arbitrary, not biased, relevant to the ability to perform or supply the service, not subjective and least-trade-restrictive alternative.⁹ Article VI of GATS specifically mandates that qualification requirements and procedures, licensing requirements and procedures and technical standards should not be:

- more burdensome than necessary,
- a restriction in the supply of a service,
- an unnecessary barrier to trade or
- applied in a trade restrictive manner.

Limited jurisprudence in GATS also point towards the direction in which multilateral regulatory disciplining and benchmarking will flow. For instance the Appellate Body in two GATS disputes (Mexico Telecommunications Dispute and US Gambling Dispute¹⁰) used the concept of ‘necessity test’ to balance two potentially conflicting priorities - promoting trade liberalization and protecting the regulatory rights of governments.¹¹ Necessity tests can be used to validate a certain domestic measure, the criteria being that an alternate and less restrictive measure could not have achieved the goal. Given the nascent stage of regulatory frameworks in developing countries, it is likely that they may be unable to prove that a certain measure was necessary for fulfilling a specific policy objective.¹² This brings forth the need for specificity in domestic regulations and Members can no longer afford institutional laxity or stakeholder insensitivity while framing regulations.

This further implies that Members of the WTO will need to pay attention to best practises in regulation and benchmark themselves against the same. A number of international organisations -

⁹Jonathan and Stumberg (2007).

¹⁰ South Centre (2007). In *Mexico – Telecommunications Dispute*, a necessity test was applied to Mexico’s use of: 1) a uniform pricing policy for the policy objective of limiting predatory pricing and fulfilling development objectives, i.e. strengthening domestic telecommunications infrastructure; and 2) higher interconnection rates for the policy objective of universal access. According to the Panel, Mexico failed the necessity test in both instances. In *US – Gambling Dispute*, a necessity test was applied on whether the United States’ ban on internet gambling, which was WTO-inconsistent and had a significant impact on trade, was: 1) necessary for the policy objectives of protecting public morals and maintaining public order; and 2) necessary to secure compliance with other WTO-consistent laws.

¹¹ WTO Secretariat (2000).

¹² South Centre (2007).

the World Bank, Asian Development Bank, World Economic Forum, IMD to name a few, work on developing a range of indicators that provide benchmarks for good regulation.

For example, the OECD International Regulation Database, amongst the most comprehensive set of indicators so far, cover six themes, comprising of 805 datapoints.¹³ These six themes are

- General policies: Firm ownership, control and legal status, antitrust exclusion and exemptions and Market access, market dominance and vertical separation of network sectors.
- Regulatory and administrative procedures: Regulation and the treatment of foreign parties
- Administrative requirements for business start-ups
- Regulation of professional services: Exclusive and shared exclusive tasks, Entry requirements, Treatment of foreign professionals and Regulations on market behaviour
- Regulation in transport industries: Road freight, Railways and Air travel (non freight)
- Regulation in the retail distribution industry: Regulatory environment, Industry behaviour and prices

The World Bank's 'Ease of Doing Business' Indicators also provide a detailed picture of the state of domestic regulation across many parameters including cost, time and number of procedures required for: starting a business, procuring licenses, employing workers, registering property etc. In addition the indicators include parameters such as investor protection index, ease in paying taxes, ease of trading and ease of enforcing contracts.

It is important to note that some of these indicators are subject to criticism on account of their fuzzy relationship with economic growth or other development indicators, however there is general agreement that aiming to improve a country's performance on most of these parameters can do more good than harm. Further, given the lack of detailed data, these indicators fill a gap in providing much-needed measurement tools that can guide policy makers.

In the following table, the commonly suggested/mandated disciplining criteria in GATS are listed and an attempt is made to suggest the indicator that can serve as a proxy measure for the listed criteria. In the subsequent section, the current state of regulation in South Asian countries is analysed based on these indicators.

¹³ Conway and Nicoletti (2005).

Table 1. Relationship of the GATS Disciplines to Governance Indicators

Disciplining Criteria	Respective GATS Article	Related Indicator	General Obligation (G) or Specific Commitment (S)
Objective	VI.4 (a)	Regulatory Quality, WB	S
Impartial	VI.4 (a)	Regulatory Quality, WB	S
Transparent	VI.4 (a), III	Corruption, WB and Transparency International	G and S
Not more burdensome	VI.4 (b)	Regulatory Quality, WB and Doing Business, WB	S
Pre-established	VI.5 (a)(ii) Stricter disciplines are expected under VI.4 negotiations	Institutional Quality, Infrastructure, World Competitiveness Indicators, IMD	S
Publicly Available	III	E-governance, KAM, WB	G
Reasonability of time	VI.3	Doing Business, WB	S
Right of appeal	VI.2(a)	Rule of Law, WB	G
Least Trade Restrictive (Necessity Test)	VI.4(b) and (c) (Additional disciplines are expected)	Regulatory Quality, WB	S
Related to Administrative Costs	Disciplines expected under VI.4 negotiations	Doing Business, WB	S
Subject to public scrutiny / comments	Disciplines expected under VI.4 negotiations	Right to Information Act	S

Source: Author's Analysis

3. Domestic Regulation and South Asia: Current State of Play

The South Asian region, as a whole can be characterised as being at a lower level of regulatory maturity. For a number of decades, important services sectors in the region namely telecommunications, transport, energy and financial services were in the exclusive domain of the public sector. Regulators and market operators were inseparable. Since the 1980s, South Asian countries have liberalised key sectors. Yet, regulatory obstacles in South Asia continue to be amongst the highest in the world, second only to Sub-Saharan Africa.¹⁴

In most South Asian countries financial markets are less developed. For instance financial instruments in real estate, index funds, derivatives in equity, exchange rates and interest rates, are absent in almost all South Asian countries.¹⁵

¹⁴ McIiesh and Martin (2005)

¹⁵Thomas (2006).

Similarly, a number of countries in South Asia, do not have e-commerce laws that covers the gamut of e-commerce related issues such as domain names, intellectual property rights, privacy, encryption, electronic contracts, cyber crime, online banking, spamming and so on. In South Asia, India, Pakistan and Sri Lanka have enacted e-commerce laws. India enacted the Information Technology Act in 2000, Pakistan enacted the Electronic Transactions Ordinance in 2002 and Sri Lanka certified the Electronic Transactions Act in 2006.¹⁶ In Bangladesh, the Law Commission has recently in 2007, proposed a model law, while in Nepal, Bhutan and Maldives the laws are in a draft stage.

Some countries in South Asia, namely Nepal, Bhutan, Bangladesh and Maldives lack basic regulatory instruments such as competition policy. As far as consumer protection is concerned, most South Asian countries have enacted some form of legislation, however the state of implementation differs widely from non-existent to inadequate. The state of legal instruments that promote transparency cannot even be termed as perfunctory. For instance, no country in South Asia, except India has enacted the 'Right to Information' legislation at the national level.

At the sectoral level, South Asian countries have been unable to effectively institute independent and efficient regulators. Consider for example the energy sector. The transmission and distribution losses in SAARC countries are eight times higher than that in the ASEAN region, inspite of the installed capacity in the SAARC region being higher. In addition, on average 35.8 percent of South Asia's population has access to electricity compared to 56.9 percent for the ASEAN region.¹⁷ According to Rajan (2006) the extent of transmission and distribution losses is a quick and ready measure of quality of institutions. In India, the states that have the highest transmission and distribution losses were those that have grown slowest.

India, in general, is considered to be at a higher level of regulatory transition in comparison to other countries in South Asia. However, within the country, the state of regulation differs extensively. While financial sector regulation and telecom regulation in India is often considered at par with the best in the world, in some other sectors like energy, the policies represent a chaotic mix that neither facilitates competition nor public interest.

The following section assesses the performance of South Asian countries with the help of select generally accepted indicators of regulation. Since the DR disciplines in GATS emphasise both – the nature of policies and the nature of institutions, the following section adopts a two-pronged approach of analysis – state of regulatory institutions and quality of regulation.

3.1 State of Regulatory Institutions

Emphasis on institutional quality is evident from several GATS Articles. Article III on Transparency requires enquiry points to be established for providing information relating to all measures of general application to trade in services. Article VI.2 of GATS specifically mandates member countries to maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures for the prompt review of cases and remedial action towards affected service

¹⁶Duggal (2003).

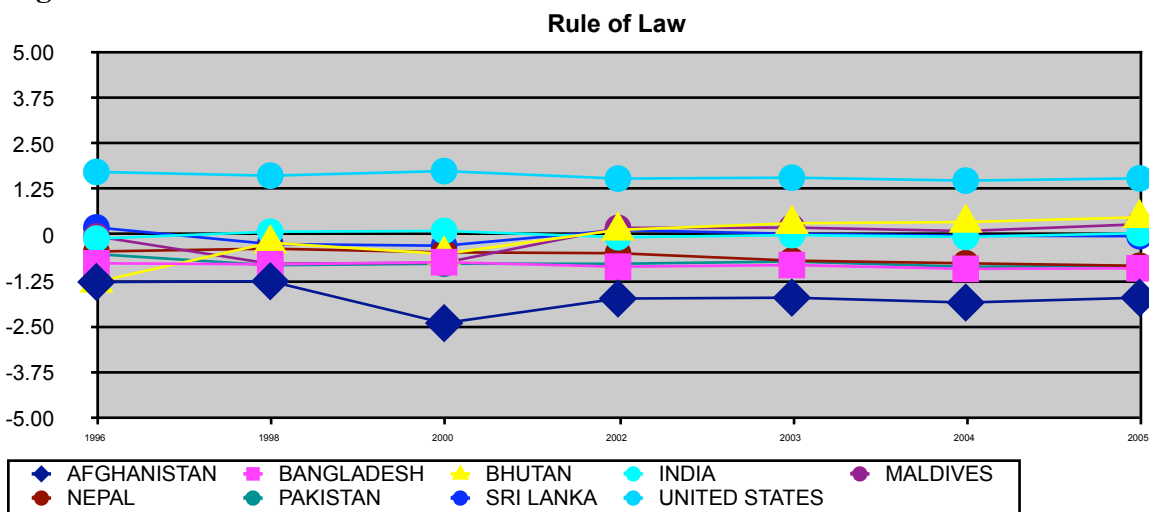
¹⁷Khan (2007).

suppliers.¹⁸ Given the different quality of judicial institutions across member countries, this may require an overhaul of legal infrastructure, such as fast track tribunals and increase in access points.

Legal Institutions

The rule of law indicators in the World Bank Governance Indicators, indicate the extent to which agents have confidence in and abide by the rules of society, in particular the quality of contract enforcement, the state of courts and police as well as the likelihood of crime. The following graph depicts the rule of law indicators in the context of South Asia. The rating is based on a scale ranging from +2.5 to –2.5 on the Y-Axis. A higher value denotes higher rating.

Figure 1. Rule of Law Indicators in South Asia



Source: Based on Aggregate Governance Indicators Dataset 1996-2005, World Bank

South Asian countries do not fare well in the rule of law indicators. India and Sri Lanka are the only South Asian countries that have positive values of 0.04 and 0.01 respectively, yet substantially lower than the US at 1.64. Bangladesh continues to be the laggard at –0.80. In terms of the stability of quality, Bangladesh and India have a variance below 1%. However, this signifies that Bangladesh is consistently poor. The variance for Bhutan and Maldives has been the highest at 40% and 27%. However, the trend for both these countries is positive, reflecting consistent improvement.

Kelegama and Parekh (2004) argue that institutions in South Asia mostly thrive on informal networks of political and family connections. There is a lack of transparency and accountability in the operation of government institutions in South Asia. As a result, discretionary measures taken by key individuals within institutions have become widespread. This type of institutional operation has not only resulted in large transaction costs but has also created political and economic uncertainty in the region.

¹⁸ GATS 1994.

Box 1. Institutional Coordination Problems in Regulation: Case Study of Sri Lanka

With regard to the policy and regulatory environment, Sri Lanka ranks 89 in the 2007 Doing Business report, better than India (134) or China (93), but leaving much room for improvement (World Bank 2006). There is, however, no concerted and coordinate policy to enhance the regulatory and institutional environment. The number of policy making and implementation institutions include some 15 Central Government Ministries, 50 Statutory Bodies, Provincial Councils, at least 300 Business Development Services Providers (including NGOs), a large number of national level Chambers of Commerce and Industry (excluding District Chambers), and some 7 major development agencies (not counting those working in tsunami affected areas). At the District or Provincial level, there is no priority for micro and small enterprises (MSE) development. Improving the environment for MSEs is generally not part of development planning or day-to-day decision-making. Officers who implement regulations are interested in control rather than facilitation.

According to a recent World Bank/ ADB report, less than 8 percent of firms mention licensing and operating permits as a constraint to doing business, Enter-Growth found that this may be due to the large majority (between 70 to 80 percent in the project area) functioning without registration or license (World Bank, 2004; ADB 2004; TNS Lanka 2006). The unfavorable environment is partly due to the lack of dialogue between provincial and district authorities on the one hand and the private sector on the other. There is no platform for regular consultations around MSE issues. Officials are often ill informed about issues relating to the business environment and strategies to address them. On the other hand, chambers of commerce have been slow to include MSEs and to offer them benefits. Business Associations are weak and often function as welfare societies. There is little awareness that closer cooperation and better organisation would be beneficial to the local economy.

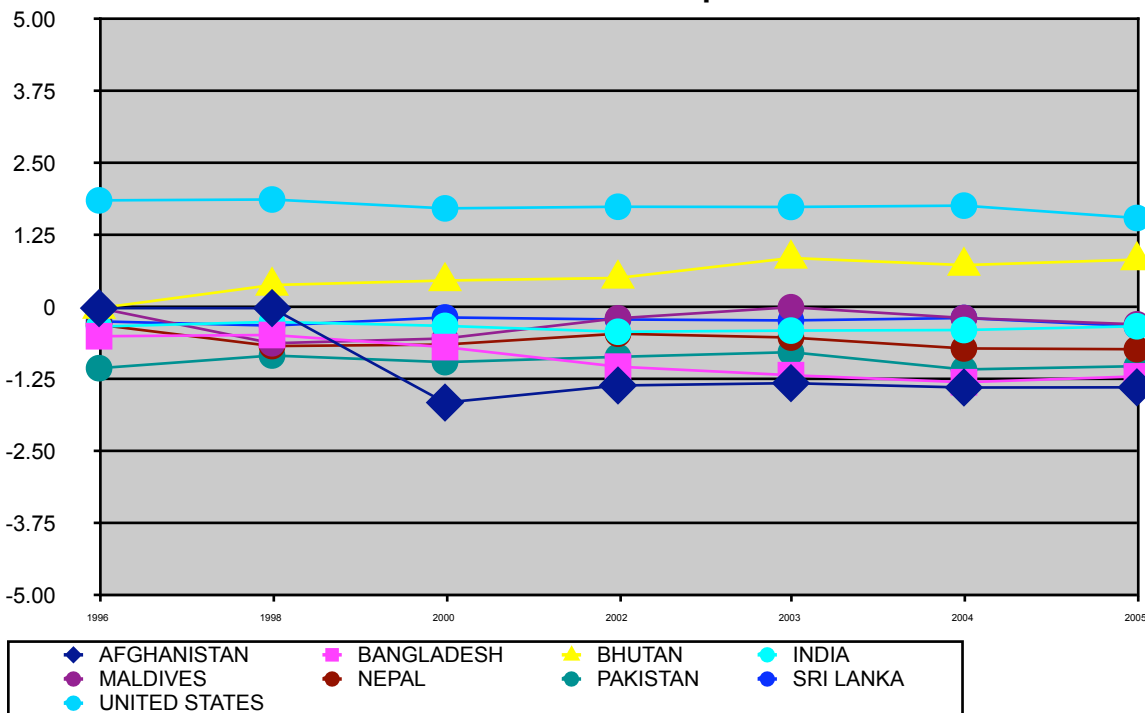
Source: Hakemulder, Roel, 'Improving the Local Business Environment through Dialogue: A Story from Sri Lanka', presented at Asia Consultative Conference, International Labour Organisation, November 2006, Thailand, 8

Institutional Corruption

DR disciplines in GATS require measures on trade in services to be administered in a reasonable, objective and impartial manner (Article VI.1). In addition, Article III of GATS entirely deals with transparency in application of measures. Thus, corruption, which is a result of opacity of measures and discretion of regulators, is an important target of GATS DR disciplines.

The Corruption Indicators in the World Bank Governance Indicators measure the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as capture of the state by elites and private interests. These indicators include red tape, surveys on nepotism, cronyism and patronage by policy makers, extra payments made to public officials as well as public perception regarding politicians. The following graph depicts the corruption indicator with reference to South Asian countries. The rating is based on a scale ranging from +2.5 to -2.5 on the Y-Axis. A higher value denotes higher ratings.

Figure 2. Corruption Indicator in South Asia
Control of Corruption



Source: Based on Aggregate Governance Indicators Dataset 1996-2005, World Bank

In South Asia, Bangladesh and Pakistan have been the worst performers in corruption with average values below -0.90 from 1996 to 2005. Bhutan is the only South Asian country with a positive indicator at 0.64 , which still lags behind that of the US at 1.76 . The variance has been highest for Bangladesh at 12% , while that of almost all South Asian countries has been below 3% . Transparency International's Corruption Perception Index (Refer Annexure 3 of this chapter) also reveals that most South Asian countries perform poorly with regard to corruption.

Institutional quality in South Asia is also based on the nature of institutions. While India performs poorly in terms of "contracting institutions", it fares reasonably well on measures of "property rights institutions." The reverse is true for Bangladesh, which stands out for having poor "property rights institutions" but reasonable "contracting institutions".¹⁹ Differences in the nature and quality of institutions across countries gives rise to the possibility that the same policy may have different effect in different countries.²⁰

The Global Competitiveness Report (Refer Annexure 4 of this chapter) rates countries based on the business environment, the quality of institutions, infrastructure and technology readiness. India is leading the South Asian countries in overall ranking, of 43 , while Nepal is at the tail end with a ranking of 110 .

¹⁹Fernandes and Kraay (2005).

²⁰Virmani (2004).

3.2 Quality of Regulation

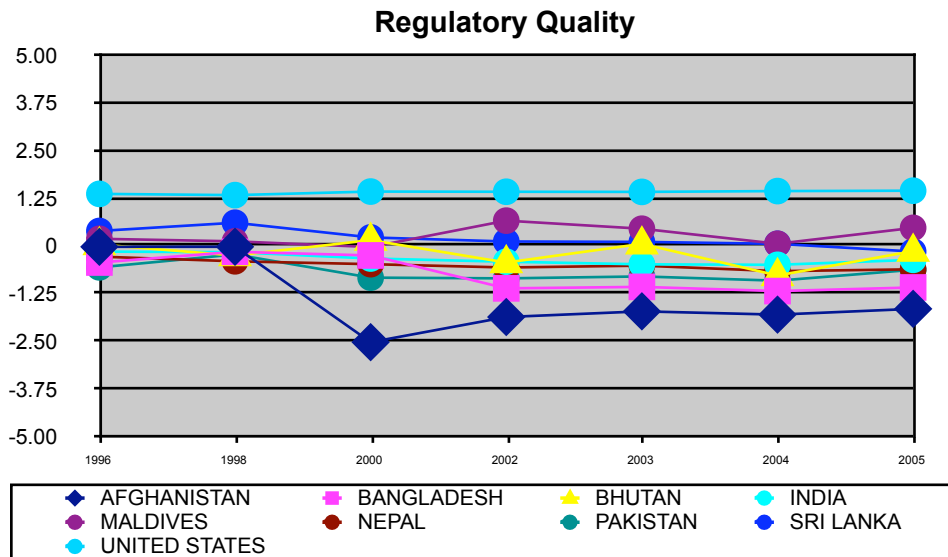
Institutional quality represents one side of the coin in understanding the overall regulatory environment in South Asia, the second being quality of regulation. The DR disciplines in GATS envisage to provide a baseline quality of domestic regulation that ensure that beyond the MA and NT limitations, regulations are transparent, non-discriminatory and least burdensome.

The World Bank's regulatory quality indicator rates countries based on the extent of market-unfriendly policies. For the most part, regulatory quality indicators deal with national treatment and market access component of the GATS. The following table outlines some of the subcomponents of regulatory quality indicators used in the World Bank Governance Indicators, and its relationship with GATS. The rating is based on a scale ranging from +2.5 to -2.5 on the Y-Axis. A higher value denotes higher ratings.

Table 2. GATS and Regulatory Quality Indicators

Sub-indicator	Source	GATS Article related to the Indicator
Unfair competitive practices	Economist	NT, MA, DR
Price Controls	Intelligence	NT, MA, DR
Discriminatory tariffs	Unit	NT, MA
Excessive Protection		NT, MA, DR
Discriminatory Taxes		NT
Competitive Environment	CPIA, World	DR, NT, MA
Factor and Product Markets	Bank	DR, NT, MA
Trade Policy		NT, MA

As depicted in Figure 3 below, South Asian countries rank quite low in the regulatory quality indicators. Maldives and Sri Lanka which are amongst the most liberalized countries in South Asia are ranked higher and have a positive average of 0.30 and 0.22 respectively while all other South Asian countries have negative values. In addition, with reference to the US, the South Asian countries show erratic values signifying less stability in quality. For instance, the US shows a variance of 0.18 percent in regulatory quality from 1996 to 2005. For the same period India and Sri Lanka are closest to the US at 1.69 percent and 1.97 percent respectively with all other South Asian countries being above 5 percent.

Figure 3. Regulatory Quality Indicators in South Asia

Source: Based on Aggregate Governance Indicators Dataset 1996-2005, World Bank

However, it is important to note that this indicator stresses more on the extent of liberalization than the quality of regulation, hence it is likely for most South Asian countries to score lower than other regions, since they are relatively more protected than counterparts elsewhere in Latin America and the ASEAN region.

Regulatory Heterogeneity

The expected DR disciplines under Article VI also aim towards standardising regulatory requirements and procedures within countries. For instance, countries are expected to provide standardised timeframes for processing applications. Differences in procedures, time and cost for the same administrative requirement in different regions of a country reflect inconsistency and regional heterogeneity of regulation and may be considered incompatible to GATS disciplines.

The Doing Business Indicators of the World Bank provide region-specific data for select South Asian countries namely India, Pakistan and Bangladesh. Measuring the variability of indicators at sub-national levels as indicated in the table below reveals that regulatory procedures in South Asia differ widely across regions.²¹ For instance, in India, the variation in cost between the highest and the lowest state for receiving a license is 151 percent, while the variation for time required is 107 percent. The variance for Bangladesh appears to be the least, however its overall quality of regulation is poor, as indicated in Figure 3 above.

²¹ Variability is measured using the following formula: $((H1-L1)/L1) * 100$ where H1 = highest value and L1 = lowest value. For example if highest number of days to start a business in one region are 15 and lowest in one region are 5, the variability is $((15 - 5)/5) * 100 = 200\%$.

Table 3. Variability of Regulatory Procedures in Select South Asian Countries

Variables	India	Pakistan	Bangladesh
Starting a Business			
Number of Procedures	18%	10%	0%
Time in Days	39%	8%	21%
Cost (% of PCI)	56%	27%	34%
Dealing with Licenses			
Number of Procedures	44%	40%	14%
Time in Days	107%	40%	26%
Cost (% of PCI)	151%	38%	90%
Enforcing a Contract			
Number of Procedures	0%	0%	0%
Time in Days	80%	19%	26%
Cost (% of Claim)	84%	59%	12%

Source: Author's Calculations based on World's Bank's Doing Business in South Asia 2007

A detailed investment climate survey in Pakistan revealed that the heterogeneity of regulations is not only across regions but also based on the size of the business, the sector of operation and nature of ownership. For instance in Balochistan in Pakistan, 23 percent of the businesses interviewed, stated that business permits posed as a severe constraint to business, compared to 5.3 percent in the Northwest Frontier Province. The survey reveals that the existing investment regime is more penalizing for the privately held limited liability companies and current corporate laws do not focus on reducing compliance costs. Similar the extent of regulatory constraints differ based on whether the firm is exporting or caters to the domestic market.²²

Ease of Compliance

Disciplining procedures and requirements relating to qualifications, licensing and technical standards is the core mandate of DR disciplines. The Doing Business Indicators of the World Bank study the constraints faced by the private sector while dealing with government intermediaries for conduct of business. Improving the overall business environment will be an important step towards improving the efficiency of the domestic economy, given that regulations impose greater costs on smaller enterprises. A survey done in Uttar Pradesh, a state in North India, revealed that 61 percent of micro enterprises do not comply with any requirement of incorporation in India, on account of the regulatory burden. The figure for Nepal was worse at almost 80 percent, while Pakistan was performing better at 47 percent.²³

The following table provides a comparison of South Asian countries on the ease of starting a business. Maldives is leading the rank, while India is the worst performer. One could argue that there is no relation between the rankings and the actual investment flows or value of exports in the economy. However, that lowering of transaction costs, simplifying procedures and reducing procedural delays improve the efficiency of the economy, is quite irrefutable.

²²Sajjad and Wade (2006).

²³Joshi (2006).

Box 2. Integrating Sub-federal Domestic Regulation in Reform Processes: Case Study of Karnataka

In Karnataka, a state in South India, the business environment was plagued with multiplicity of laws. An average business was subject to 64 different laws and rules, required 32 clearances and involved dealing with 22 regulatory agencies. On an average, a business was subject to 27 different inspections a year, and was required to maintain 40 registers, file 42 returns and 16 application forms. In a survey conducted by Public Affairs Centre, Karnataka of 1100 industrial projects in Karnataka, 65 percent of the respondents were dissatisfied with corruption and 53 percent with their general interaction with the government. The proportion of surveyed expressing dissatisfaction with the infrastructure included 68 percent for power, 51 percent for roads, 44 percent for water and 29 percent for telecommunications. In addition, with regard to processing time at various government utilities, the proportion of population dissatisfied were 71.9 percent for land, 81.8 percent for power, 30.8 percent for water, 60.9 percent for environment and 58.8 percent for finance.

In 2000, the Karnataka Government launched the Economic Restructuring Program, which resulted in the enactment of the Karnataka Industries Facilitation Act (KIFA) in December 2004. The key features of KIFA were to develop a single window for applications in the form of a nodal agency, streamline returns and registers, introduce self-certification and reduce the number of application forms from 19 to 6. The reform agenda included parallel reforms in streamlining inspections, simplifying labour and environment clearances and requirements as well as land market reforms such as developing building codes to reduce approvals. As of 2006, the reforms have led to positive impacts; the nodal agency is in place and the burden of returns and registers has reduced. However problems such as dissemination inadequacies at district level, poor databases and information assessment, and poor coordination amongst various departments continue.²³

Source: Dasgupta, Paramita, World Bank (2006)

Table 4. Starting a Business in South Asia

Country	Rank	Number of Procedures	Time in Days	Cost as % of Per capita income
Bangladesh	68	8	37	88
Bhutan	79	10	62	17
India	88	11	35	74
Maldives	31	5	13	18
Nepal	49	7	31	79
Pakistan	54	11	24	21
Sri Lanka	44	8	50	9
US	3	5	5	0.7
Singapore	11	6	6	0.8

Source: Doing Business 2007, World Bank

Licensing requirements and procedures pose as barriers for both - the domestic industry and foreign suppliers. Article VI.4 disciplines apply to licensing requirements and procedures. The Doing Business Indicators suggest that South Asian countries rank low in the simplicity and ease of dealing with licenses. India remains the worst performer at a rank of 155, requiring an average of 270 days for obtaining licenses. On the other hand, Maldives's performance is exceptionally good with a rank of 9 and the time required being 118 days and costs at 40 percent of per capita income, which is above the US and one rank lower than Singapore.

Table 5. Dealing with Licenses in South Asia

Country	Rank	N u m b e r o f Procedures	Time in Days	Cost as % of per capita income
Bangladesh	67	13	185	272
Bhutan	145	26	204	263
India	155	20	270	606
Maldives	9	10	118	40
Nepal	127	15	424	324
Pakistan	89	12	218	973
Sri Lanka	71	17	167	151
US	22	18	69	16
Singapore	8	11	129	22

Source: Doing Business 2007, World Bank

ILO studies around the world and in South Asia have found that business environment, in its adverse form, influence more negatively on the growth of micro and small enterprises (MSEs). The studies have also found that in general, MSEs have been dissuaded from taking advantage of more formal business environment due to procedural hassles and costs associated with them. Inability of MSEs to comply with the regulatory requirements has resulted in them being excluded from formal access to market, information and resources, for instance access to institutional finance.²⁴

E-Governance

An important indicator of efficient regulation is the extent to which governments are able to use technology to address regulatory needs. DR disciplines in GATS require government authorities to provide information regarding authorization processes within a reasonable time (Article VI.3). Article III requires governments to promptly publish all relevant measures of general application, which pertain to or affect the operation of GATS. Each Member is also required to establish one or more enquiry points to provide specific information to other Members relating to GATS related measures. E-governance plays a crucial role in dissemination and public provision of information in an affordable and organised manner. In addition, e-governance is crucial for keeping pace with Mode 1 (cross-border trade) as a growing medium of services trade. The Knowledge Assessment Methodology Indicators of the World Bank are a benchmarking tool for countries to measure their performance towards e-governance.

²⁴Joshi (2006), 1.

Table 6. Availability of E-Government Services in South Asia (2006)

Country	1-7 Rating Scale
Bangladesh	1.59
Bhutan	NA
India	3.55
Maldives	NA
Nepal	0
Pakistan	2.93
Sri Lanka	2.07
US	5.50
Singapore	6.22

Source: KAM Indicators, World Bank, 2006

According to the World Bank (see Table 6 above) most South Asian countries are rated very poorly in provision of e-governance services. India, which is amongst the global leaders in information technology and enabled services, leads the indicator in South Asia but lags far behind US and Singapore. Within India the variance in adoption of e-governance is high, with Southern states like Karnataka, Tamil Nadu, Kerala and Andhra Pradesh taking the lead and North-Eastern states such as Manipur, Nagaland, Arunachal Pradesh, Tripura amongst others, lagging far behind.²⁵

E-governance plays a crucial role in not just simplifying regulation for trade in services, but also reducing barriers at sub-national level. For instance in India the quality of education differs extensively across states as well as across the type of institutions (for instance private and public), leading to non-acceptance of qualifications informally or formally. Instituting a mechanism for benchmarking universities, developing a centralised database of universities and degree recipients to promote verification and authentication requires linking universities and regulators on a common e-platform.

Another service sector where integration of sub-federal information is crucial is the financial sector. The credit economy in South Asia includes banks, financial institutions, micro-finance establishments, insurance agencies and private lenders, all of which require information regarding the credit worthiness of current and prospective clients. Most banks and financial institutions collect this information during processing of loans, however the information is private and a platform to share the same is not available. Developing a universal database of credit profiles can reduce a substantial amount of risk and save costs for financial institutions. Despite the urgency, the proportion of population for whom credit information is available, remains almost zero in most South Asian countries (See Annexure 5 of this chapter).

Domestic regulatory reform in a globalising environment requires regulators to grapple with issues ranging from exponential development in technologies, handling enormous amount of data and multiple and overlapping regulatory jurisdictions. Linking national databases, providing simple interfaces for users across the country to access, feed and use information, increasing transparency, all require state of the art technology.

²⁵Government of India (2005), 15.

Box 3. Plethora of Inspections Dampens Competitiveness of Indian Industry

According to a FICCI survey on Inspection Systems in India, carried out in 2007, inspections are resulting in excessive loss of man-hours to the industry and even now after 16 years of liberalisation process involve a high compliance cost for the industry under environment, labour, occupational health and safety, Standards Weights & Measures Act and tax-related regulations.

An industrial unit could be subject to as many 106 inspections in a year under environmental regulations. Inspections are done under 16 different Acts/Regulations related to environment like Air (Prevention & Control of Pollution) Act 1981, Hazardous Waste (Management and Handling) Rules 1989, 2003, Water (Prevention and Control of Pollution) Act 1974, Water (Prevention and Control of Pollution) Cess Act 1977, Mineral Conservation and Development Rules 1988 etc. In terms of time involved in complying with these Rules/Acts, FICCI survey reported that around 30 to 40 days in a year are required on an average for an industrial unit to comply with these inspections related to environment.

In case of labour laws, inspections are carried-out under at least 22 legislations like Apprentices Act 1961, Contract Labour (R & A) Act 1970, Employee's Provident Fund & Miscellaneous Act 1952, Employee's State Insurance Act 1948, Factories Act 1948, Industrial Dispute Act 1947, Mines Act 1952, Minimum Wages Act 1948, Payment of Bonus Act 1965, Payment of Gratuity Act 1972 etc, FICCI pointed-out

FICCI survey revealed that an industrial unit could be subject to minimum of 19 inspections in a year under various Occupational Health & Safety rules. In terms of compliance time it was reported that around 45 days in a year are required on an average by the industrial unit to comply with various inspection related procedures of Occupational Health & Safety Rules. These inspections are related to Bio-Medical Waste (Management & Handling) Rules 1998, Insecticides Act & Rules, Solvent Raffinate & Slop (Acquisition, Sale, Storage and Prevention of Use in Automobiles) Order 2000, Gas Cylinder Rules 1981, Indian Boiler Act 1923, Indian Electricity Act & Electricity Rules 1956, Indian Explosive Act 1884, Mines Act 1952, Motor Vehicle Act 1988, Petroleum Act 1934, Radiation Protection Rules 1971 etc.

Similarly, under Standards & Weights related legislations, the report pointed out that certain inspections could be easily replaced by self-certification. For instance, inspections related to weights for internal processes that do not involve any interface with suppliers or customers, can be easily avoided. FICCI survey shows that around 45 days could be required to comply with inspection related procedures only under Bureau of Indian Standard Act. Again, under Standards of Weights & Measures Act 1976/Enforcement Rules 1988 each weight and measure being used is to be verified and stamped once in a year.

With regard to tax related inspections, FICCI pointed-out that under Central Excise Act it takes around 4 to 7 days to comply with each inspection and around 3 to 4 employees of the industrial unit get involved on full time basis during the time of inspection.

Source: Federation of Indian Chamber of Commerce and Industry (2007)

Note: While some of these requirements do not deal with the services sector, they offer some indication of the state of administration machinery irrespective of the sector in question.

Developed countries have invested substantially in technology over the years. Given the current capacity constraints in South Asian countries, it is imperative that they seek assistance in technology and skillsets from their developed counterparts. Article IV.1(a) specifically calls for member countries to enhance participation of developing countries through technology transfer on a commercial basis. For LDCs in particular, aid for trade and other forms of development assistance can be used to fund technical assistance on a commercial basis.

4. Concluding Remarks

This chapter provided a brief overview regarding the scope and nature of GATS DR disciplines. It suggested that there are clear links between the disciplines and the commonly used indicators of good regulation, implying that implementing GATS may require Members to improve their regulatory structures. The analysis regarding domestic regulation in South Asia revealed that the region is far behind in the state of regulatory institutions as well as the quality of regulations. With reference to institutions, the rule of law indicators, corruption indicators and institutional coordination problems validate the need for improvement. With regard to quality of regulation, regulatory quality indicators, heterogeneity indicators, e-governance indicators and ease of doing business indicators provide evidence that South Asian countries have not been able to effectively overhaul their domestic regulatory framework.

While this chapter has discussed the linkage between the GATS disciplines and good governance, it has not done justice to the concerns that result out of imposing external disciplines on the domestic policy space of governments. One such widely expressed concern is that the GATS disciplines will result in loss of policy space. However, the counterview is that policy space is being lost at various fronts, for instance through investment agreements, regional trade agreements and a plethora of global institutional regimes, which are often more undemocratic in their approach compared to the WTO. Regional/Bilateral trade agreements, particularly North-South ones, are often lopsided and severely restrict domestic policy space. In the WTO, all Members in general (not only developing countries), bind their policies. In addition, developing countries in general and LDCs in particular receive more favourable treatment in the WTO.²⁶ From this perspective, the WTO may indeed pose as a better option.

Another important concern emerging from implementing GATS DR disciplines is regarding the cost of implementation. The GATS appears to be less considerate to the implementation cost, as evident from the GATS disputes. For instance, in the case of necessity tests (discussed earlier in Section 2) if an alternate measure may be less-trade restrictive, but expensive to implement, the GATS is expected to tilt in favour of the alternate measure. In such a situation, developing country governments may be forced to invest in expensive regulatory infrastructure, which will involve additional expenditure on royalties, patented-technologies and consultants.

The implementation of GATS disciplines also poses another risk – that of discrimination against domestic suppliers. The GATS intends to discipline regulatory behaviour towards foreign services suppliers. Thus governments are not required to change regulations impacting their own domestic suppliers, which can result in discrimination. A dichotomous framework establishing parallel machinery that assists foreign service providers may be GATS compliant but will lead to reverse discrimination. Hence, it is important to ascertain that the implementation of DR disciplines should

²⁶ For example in the Hong Kong Ministerial Declaration in December 2006, all Members agreed that LDCs will not be required to make any further commitments in GATS.

not be independent of current domestic reform processes. A non-discriminatory approach is likely to render greater benefits for domestic small and medium enterprises as discussed in previous sections.

Apart from the above-mentioned issues, a range of problems such as lack of capacity, poor sub-federal regulatory structures, inadequate regulatory coordination, pose as additional challenges before South Asian countries. Hence countries should ensure that their schedules embed effective flexibilities to protect domestic policy space. Apart from concerns regarding GATS disciplines, the chapter has also not dealt with important issues in regulatory reform.

For instance, the chapter has not focussed on regional approaches towards improving domestic regulation, the reason being that South Asia is the least integrated amongst all regions, wherein intra-regional trade is less than two percent of total trade, compared to more than 20 percent for East Asia.²⁷ In addition, the SAFTA does not include services trade, though inclusion is envisaged in the near future. Towards this direction, best practises from other regional agreements such as the EU, NAFTA and ASEAN could be considered. These include mutual recognition and equivalence frameworks for professional services, establishing common markets for sectors such as telecom, transport, energy and other infrastructure services and developing regulatory cooperation frameworks in regulation of services such as finance, energy and utilities. However, these initiatives require a certain degree of trust amongst the Member countries of the region. In the South Asian context, the trust factor is largely inadequate, rendering any form of regulatory cooperation to be cursory in nature.

Another priority area with reference to DR that received less attention in the chapter is an analysis of regulatory frameworks for consumer protection, competition policy, standards and similar crosscutting policy instruments in South Asia (mentioned in Section 3). A detailed investigation of laws and implementation of these instruments, including suggestions for strengthening the same will play an important role in safeguarding domestic policy space. In addition, foreign services suppliers will be better monitored and regulated.

The issue of strengthening sub-federal regulation was scantily discussed in Section 3 under regulatory heterogeneity, however it cannot be less emphasised. At the national level, South Asian countries operate in a governance structure wherein regulatory rights and responsibilities are distributed amongst the central government and the local governments. At times the regulatory functions overlap. However, the extent of information sharing, cooperation and liaison that is required between the central government and the local governments does not happen. In situations where central governments are signing international agreements such as the GATS, local governments, though equally bound, are inadequately informed or consulted. In turn the central governments also lose out in receiving inputs regarding the impact that such agreements may have at the local level.

In light of these observations, South Asian countries can use GATS as a window of opportunity to proceed to a more advanced level of regulatory reform. The expected disciplines will require governments to maintain minimum standards of efficiency. In addition, the disciplines encourage the adoption of best practises in regulation such as use of single window clearance, implementation of right to information and cooperation amongst sub-federal institutions.

²⁷ World Bank (2007).

This will also play an important role in tackling 'vested interests' in institutional reform. For instance, almost all countries of the region suffer from the colonial legacy of civil services, dominated by strict hierarchies, gamut of rules and procedures and tendency towards control. Complex roles in regulatory policy, which typically require technocrats and professionals, continue to be held by generalists (civil servants). Through the process of locking in to reform, it may be timely to consider revamping the administrative services in South Asian countries, particularly given that governments may, in the future, be made to pay for being inefficient, by being subject to GATS disputes.

A note of caution is however necessary regarding the risk of excessive external intrusion in domestic policy making, which can be addressed to an extent by prudent scheduling. In conclusion, the manner in which countries balance the two pillars of efficiency and regulatory independence will be crucial in their attempt to integrate GATS disciplines with their domestic reform agenda.

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Annexures

Annexure 1. Legal Text of Article VI (Domestic Regulation) in the GATS Agreement

1. In sectors where specific commitments are undertaken, each Member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
2. (a) Each Member shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Member shall ensure that the procedures in fact provide for an objective and impartial review.
 - (b) The provisions of subparagraph (a) shall not be construed to require a Member to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.
3. Where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Member shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Member shall provide, without undue delay, information concerning the status of the application.
4. 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.
5. (a) In sectors in which a Member has undertaken specific commitments, pending the entry into force of disciplines developed in these sectors pursuant to paragraph 4, the Member shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:
 - (i) does not comply with the criteria outlined in subparagraphs 4(a), (b) or (c); and
 - (ii) could not reasonably have been expected of that Member at the time the specific commitments in those sectors were made.
 - (b) In determining whether a Member is in conformity with the obligation under paragraph 5(a), account shall be taken of international standards of relevant international organizations applied by that Member.
6. In sectors where specific commitments regarding professional services are undertaken, each Member shall provide for adequate procedures to verify the competence of professionals of any other Member.

Annexure 2. Domestic Regulation and Market Access in GATS: A Comparison

Source: Author's Analysis

Annexure 3. Perception on Corruption in South Asian Countries

Country	Rank	Value (1-10)
Bangladesh	156	2
Bhutan	32	6
India	70	3.3
Maldives	-	3.4
Nepal	121	2.5
Pakistan	142	2.2
Sri Lanka	84	3.1
US	20	7.3
Singapore	5	9.4

Source: Transparency International Corruption Perception Index 2006

Annexure 4. Global Competitiveness Index Subcategory Ranking of South Asian Countries

Country	Overall Rank in 2006	Business Environment	Institutions		Infrastructure		Efficiency Enhancers		Technology Readiness	
	Rank	Rank	Rank	Score	Rank	Score	Rank	Score	Rank	Score
Bangladesh	99	110	121	2.88	117	2.03	108	3.01	114	2.41
Bhutan	-	-								
India	43	27	34	4.55	62	3.50	41	4.32	55	3.52
Maldives	-	-								
Nepal	110	113	99	3.20	122	1.83	117	2.87	116	2.39
Pakistan	91	67	79	3.51	67	3.36	91	3.27	89	2.77
Sri Lanka	79	68	82	3.48	76	3.07	79	3.51	83	2.87
US	6	1	27	4.84	12	5.82	1	5.66	8	5.49
Singapore	5	11	4	5.90	6	6.16	3	5.63	2	5.69

Source: The Global Competitiveness Report 2006-07, World Economic Forum, Geneva, 2006

Annexure 5. Coverage of Credit Information

Country	Public registry coverage (% of adults)	Private Bureau Coverage (% of adults)
Bangladesh	0.6	0
Bhutan	0	0
India	0	6.1
Maldives	0	0
Nepal	0	0.1
Pakistan	0.3	1.1
Sri Lanka	0	3.1
US	0	100
Singapore	0	38.6

Source: World Bank 'Doing Business in South Asia 2007', Washington DC, 9

Annexure 6. Effectiveness of Government Spending

Country	0 – 100 (100 being most effective)
Bangladesh	28
Bhutan	-
India	35
Maldives	68
Nepal	-
Pakistan	40
Sri Lanka	25

Source: Chapter 3, Banking, Governance and Investment Climate, South Asia Economic Report, 2007, 27

Annexure 7. Summary of the Draft Text on Article VI.4

Since 2007, after resumption of the stalled Doha talks, a draft text on DR is in circulation amongst member countries.²⁸ The draft text attempts to develop define and introduce further disciplines on technical standards, qualification requirements and procedures, and licensing requirements and procedures.

In the preamble, the draft text spells out the objective of the disciplines i.e. to ensure that DR requirements and procedures are based on objective and transparent criteria and do not constitute disguised restrictions on trade in services. It recognises the right to regulate and to introduce new regulations as well as the difficulties faced by developing countries to implement disciplines and developing country services suppliers to comply with the rules. The second section comprises of definitions for technical standards, qualification requirements and procedures, and licensing requirements and procedures. The third section outlines the general provisions of the Article, which states that the disciplines apply to trade in services where Members have made specific commitments (listed in their schedules) and that they do not apply to measures that are scheduled as

²⁸ 'Draft Disciplines on Domestic Regulation Pursuant to GATS Article VI.4' Informal Note by the Chairman of the Working Party on Domestic Regulation circulated on 18 April 2007, as Room Document (2639).

limitations under Article XVI (Market Access) and XVII (National Treatment). This also implies that Member countries are required to schedule all domestic regulatory measures (in scheduled sectors) that they perceive to be non-compliant with the DR disciplines. In the fourth section on transparency the text requires Members to ensure that measures of general application are promptly made public in print or through electronic means. Members are also required to establish mechanisms to respond to enquiries from interested persons relating to the measures. In addition, Members are encouraged to publish measures in advance to provide reasonable opportunity for interested persons to comment on proposed measures. The subsequent five sections deal with the five categories of domestic regulation (licensing procedures, licensing requirements, qualification procedures, qualification requirements and technical standards) separately. In each of these categories the text requires Members to keep regulations as simple as possible and not in themselves being a restriction on supply of services. Some of the principles that the text stresses on include impartiality, timeliness and predictability of procedures and independence of regulator from suppliers. Use of international standards is encouraged. Nevertheless, the disciplines within these five categories appear less evolved in the draft text and may undergo a revision. For instance the disciplines under licensing requirements deal exclusively with residency requirements, limiting their application to Mode 4 in select professional services. Section ten incorporates development dimensions in the disciplines. Transitional time periods are introduced for developing countries to comply with the disciplines. Special and differential treatment is encouraged by way of reduced fees for developing country suppliers, technical assistance for improving institutional and regulatory capacity etc. In addition LDCs are exempt from applying these disciplines. Finally, in Section 11, institutional provisions are established to oversee the implementation of the disciplines.

