

Domestic Regulation & Trade in Services

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Distinction between trade restrictions and “domestic regulation”

- **Market Access (Article XVI)**
 - mostly quantitative restrictions
- **National Treatment (Article XVII)**
 - discriminatory measures

- **Domestic Regulation (Article VI: 1-3, 6)**
 - qualitative and procedural requirements
 - **Domestic regulation disciplines to be developed (Article VI:4)**
 - mandate to develop disciplines to ensure that licensing, qualification, no unnecessary barriers to trade in services
 - **Other GATS provisions (e.g. transparency)**
 - **GATS Annexes (Telecommunication Services, Trade in Financial Services)**
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- **Reference Paper of Basic Telecommunications**
 - **Services domestic regulation disciplines (through GATS Article 18 – additional commitments)**

Existing Regulatory Obligations in the GATS

Article VI – Domestic Regulation

Para 1. Administration of all measures of general application affecting trade in services in a reasonable, objective and impartial manner*

Para 2. Mechanisms for the objective and impartial review of administrative decisions affecting trade in services, and appropriate remedies

Para 3. Rules on authorizations: information on decisions regarding applications for authorization & information on status upon request *

Para 6. Adequate procedures to verify the competence of foreign professionals*

* Rules applicable *only in sectors where specific commitments have been undertaken*

GATS Article VI: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.”

Article VI:1 - key terms

Measures of general application

- unidentified number of economic operators" (EC –Poultry)
- " a range of situations or cases, rather than being limited in their scope of application" (EC -Customs matters)

Administration

- Article VI:1 deals with administration of measures, not its substance (US-Gambling, EC- Energy Package)
- Application to procedural measures administering substantive measures?

Reasonable

Lower standard than necessary or proportional which require balance between ends and means – reasonable requires a rational reason

In accordance with generally accepted standards of rationality and sound judgment (Dom Rep – Cigarettes)

No ignoring of obvious facts and standard practice (Arg- Hides and Leather)

Objective

Disregards irrational, emotional, or personal intentions

Impartial

Without giving special considerations to interests of certain parties, or group of operators, taking into account effect on other operator (Arg – Hides)

Differentiation in treatment to be based on good reasons

GATS Article VI:2

- Maintain judicial, arbitral or administrative tribunals or procedures that provide, on request of affected supplier, for prompt review for administrative decisions affecting trade in services.

GATS Article VI: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.

Issues covered by Article VI:3

1. taking decisions within reasonable period of time
2. Inform applicant within reasonable period of time
3. Inform applicant without undue delay about status of application

Article VI:6 – Verification of Competence

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

Mandate for Development of Any Necessary Disciplines on Domestic Regulation

Article VI:4 – Domestic Regulation

*“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**, the Council for Trade in Services shall develop any necessary disciplines. Such disciplines shall aim to ensure that these 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 supply of the service.”*

PACER Plus – Article 10 – Domestic Regulation

- Key elements and comparison with GATS Article VI:
 - P+ Article 10, Para. 1 = GATS Article VI:1
 - Reasonable, objective and impartial administration of measures of general application*
 - P+ Article 10, Para. 2 = building on GATS Article VI:2
 - Right to prompt review of administrative decisions for affected suppliers.
 - If tribunal not independent of agency responsible for the measure, access to tribunal/procedures shall provide for objective/impartial review.
 - (+) reasonable opportunity to defend positions
 - (+) right to a decision in accordance to a Party's law
 - (+) Any decision from the review shall be implemented in accordance with domestic laws.

PACER Plus – Article 10 – Domestic Regulation

- Key elements and comparison with GATS Article VI:
 - P+ Article 10, Para. 3:
 - Review the results of WTO negotiations on disciplines on Article VI:4 measures
 - Amend P+ as appropriate after consultations
 - P+ Article 10, Para. 4 = GATS Article VI:5
 - Provisional application: pending the above, no licensing/qualification procedures/requirements that nullify or impair commitments in a manner which:
 - Does not conform with key objectives of disciplines (para 3.), and
 - Could not reasonably have been expected.

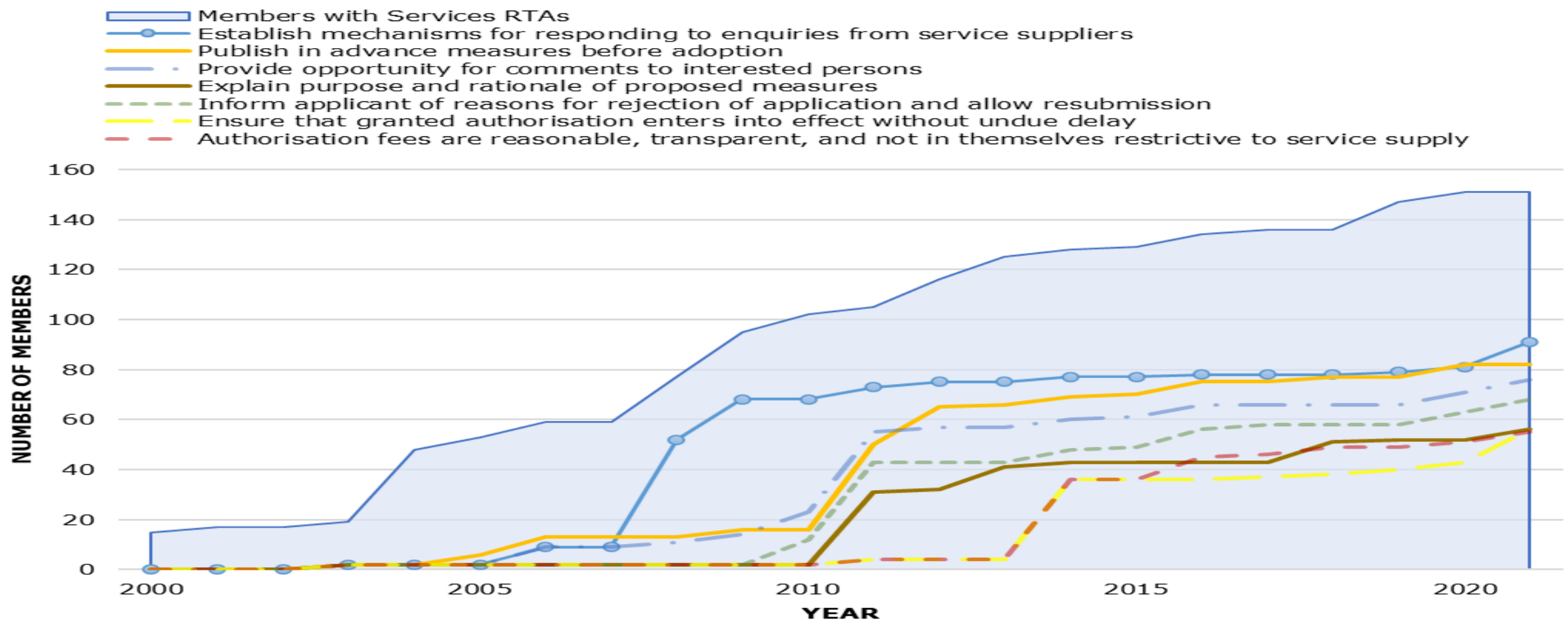
PACER Plus – Article 10 – Domestic Regulation

- Key elements and comparison with GATS Article VI:
 - P+ Article 10, Para. 6:
 - Builds on GATS Article VI:3
 - Scope: Where authorizations are required for the supply of services where specific commitments made
 - (+) For incomplete applications, identify additional information required and provide opportunity to remedy deficiencies within reasonable timeframe (on request) – Para. 6(a)
 - Inform the application of the decision within reasonable period of time after submission of complete application – Para 6(b)/GATS VI:3
 - Provide information on status of application without undue delay (on request) – Para. 6(b)/GATS VI:3

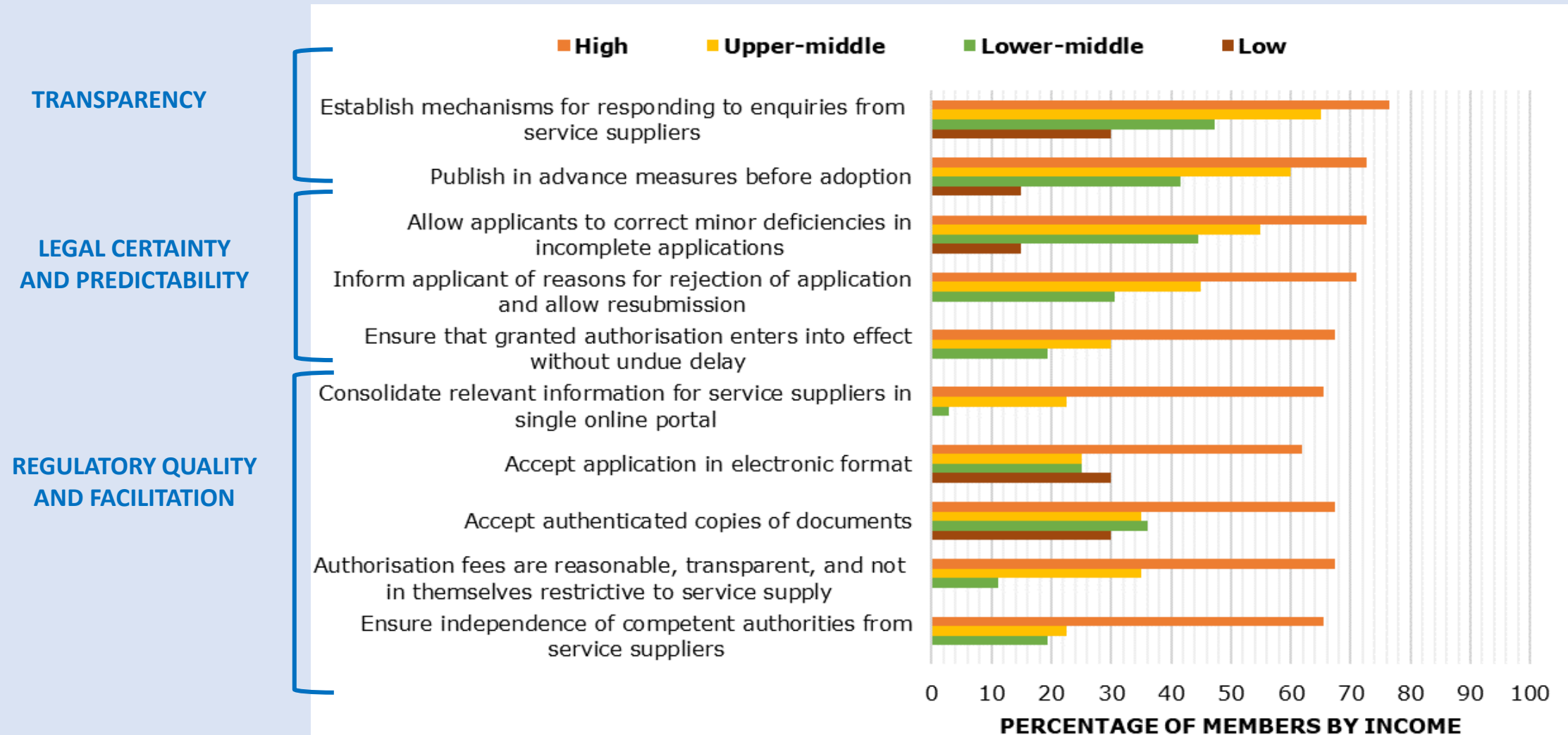
PACER Plus – Article 10 – Domestic Regulation

- Key elements and comparison with GATS Article VI:
 - P+ Article 10, Para. 6:
 - (+) If application rejected, inform applicant in writing and indicate reasons for rejection and timeframe for appeal (on request) – Para. 6(d)
 - (+) Application should be permitted to resubmit an application, within reasonable time limits. – Para. 6(d)
 - P+ Article 10, Para. 7:
 - (+) Subject to domestic laws, Parties shall permit use of business names under which suppliers ordinarily trade in their territory, and otherwise ensure use of business names is not unduly restricted.

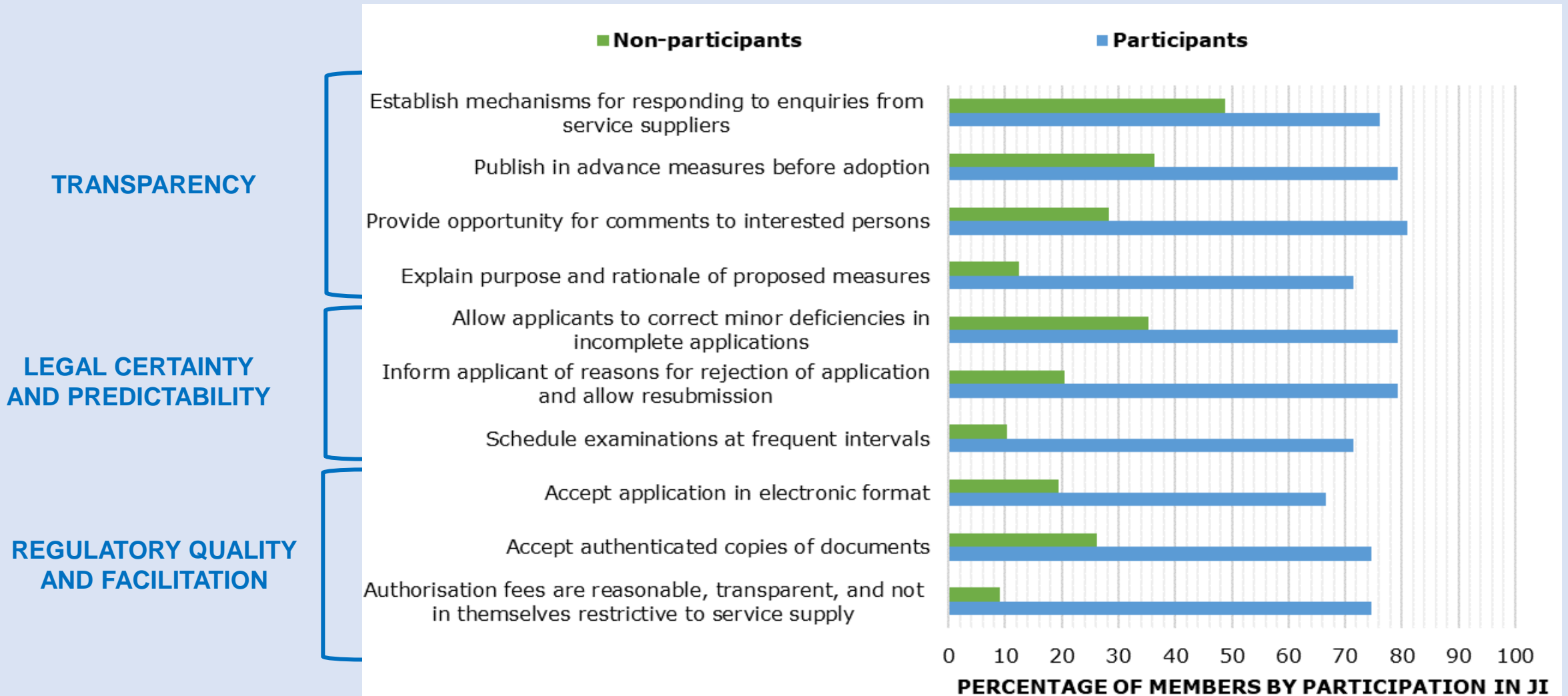
Increasing prevalence of GATS+ DR in “new generation” trade agreements, as a tool to ensure the effectiveness of services liberalization commitments



Economies at all levels of income and across all regions of the world have included SDR obligations in their FTAs, particularly in "new generation" agreements

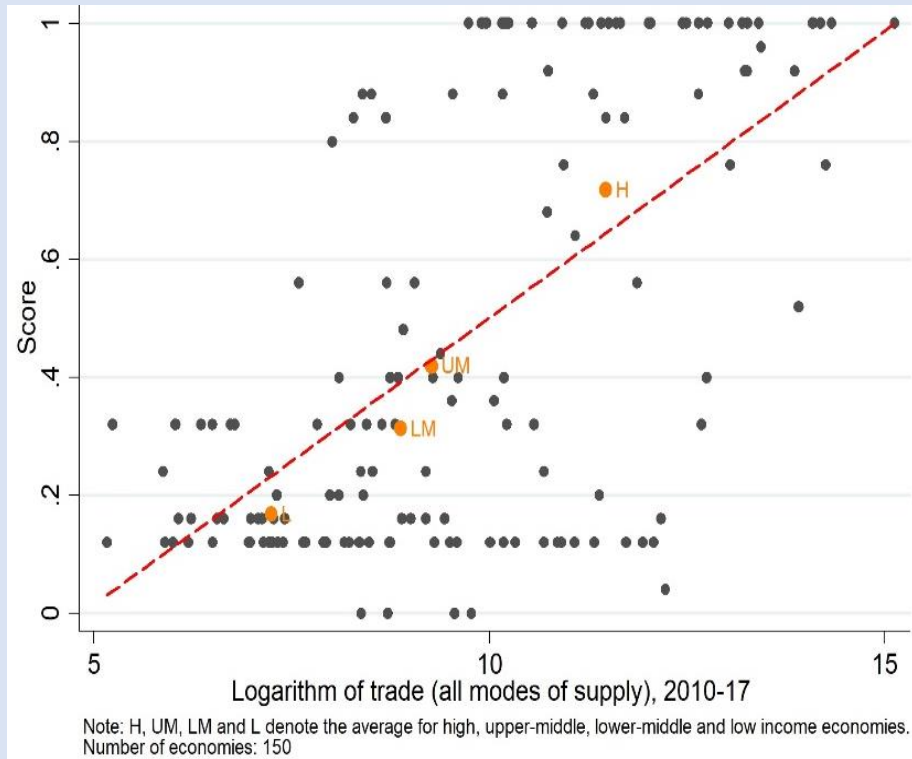


Also Members that have not signed up yet to the SDR outcome have included GATS-plus SDR obligations in their FTAs

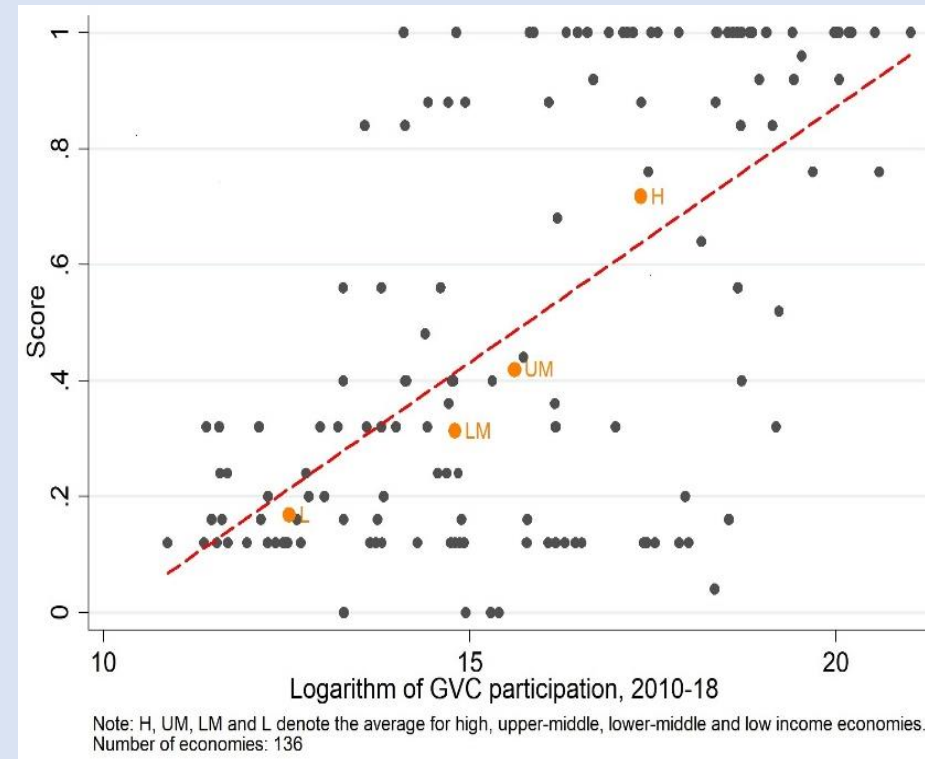


Trade benefits for the economy as a whole (WTO, 2021)

INCREASE IN SERVICES TRADE



GREATER PARTICIPATION IN GLOBAL VALUE CHAINS



See: [WTO Staff Working Paper \(September 2021\)](#)