

Insofar as services trade disciplines rule out regulations that are presently considered to be optimal, constrain movement to regulations that might be optimal in the future (through *de jure* or chilling effect), or prevent the trial and error experimentation that may be required to identify an optimal regulatory regime, their existence is problematic from a theoretical economic welfare perspective.¹⁸ The generally poor state of knowledge concerning the impact of changing regulations in developed countries, and the complexities involved in understanding the effect of the GATS regime,¹⁹ heightens concerns for many about entering into binding commitments; the far greater lack of knowledge about these issues in developing countries escalates these concerns when services trade disciplines are extended beyond the industrialized countries.

Meanwhile, introducing private sector service suppliers into areas where public sector supply has been the norm (sometimes in the form of public monopolies), while in theory welfare enhancing in economic efficiency terms due to demonopolization, might result in trade-offs with non-efficiency-related public objectives that are not considered to be desirable

¹⁸ One observation was that, in some areas, regulatory regimes develop on a "follow the leader" basis. California, for example, tends to play this role in environmental regulation while the U.S. Securities and Exchange Commission tends to play this role in securities regulation. Insofar as the bias within the WTO setting is against outliers in regulatory regimes, it would tend to "stop the leader", and thus tend to arrest regulatory development.

¹⁹ The GATS applies disciplines in some cases to non-discriminatory measures as well as to discriminatory measures, complicating determination of what is and what is not subject to, or potentially subject to, an international trade in services discipline. In a similar vein, regulations that are nominally non-discriminatory may be subject to disciplines if their effect is more onerous on foreign services suppliers – a *de facto* test. Technical difficulties in interpreting certain drafting within the GATS that have been identified by the WTO secretariat add to this concern. Indeed, the inclusion of tests for regulations such as "not more burdensome than necessary" which have yet to be subjected to jurisprudence make this agreement, in the view of some, a "labyrinth of uncertain language".