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Edited by Aik Hoe Lim and Bart De Meester

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WTO DOMESTIC REGULATION AND SERVICES TRADE

Domestic regulation of services sectors has a significant impact on services trade liberalization, which is why General Agreement on Trade in Services (GATS) disciplines are negotiated in the WTO. With the help of analyses and case studies from academics, regulators and trade experts, this book explores the scope and limits of WTO legal principles to promote domestic regulatory reform. Case studies discuss country-specific challenges and experiences of regulating important service sectors, such as finance, telecommunications, distribution, legal, education, health, postal and logistics services, as well as the role of regulatory impact assessments. The findings will interest trade officials, policy-makers, regulators, think tanks, and businesses concerned with the implications of domestic regulation on access to services markets, and with the opportunities for formulating trade disciplines in this area. It is also a useful resource for academics and students researching regulatory approaches and practices in services sectors.

AIK HOE LIM is a Counsellor in the Trade in Services Division of the WTO Secretariat, where he is Secretary to the body responsible for negotiating domestic regulation disciplines for services.

BART DE MEESTER is an Associate at the Geneva Office of Sidley Austin LLP. He previously worked as a Legal Affairs Officer at the Trade in Services Division of the WTO.

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CONTRIBUTORS

Editors

AIK HOE LIM is a Counsellor in the Trade in Services Division of the World Trade Organization (WTO) Secretariat, where he is Secretary to the body responsible for negotiating domestic regulation disciplines for services. He was formerly Deputy Head in the Cabinet of WTO Director-General Mike Moore and subsequently Counsellor to WTO Director-General Supachai Panitchpakdi. He was also Secretary/ Adviser to the Director General's Consultative Group on the 'Future of the WTO', chaired by Peter Sutherland. He has published in various academic and professional journals on subjects related to services trade, regional trade agreements, education services and human rights. His publications include chapters for several books, such as 'The Future of Trade in Services for Developing Countries' in *Trade and Poverty Reduction in the Asia-Pacific Region* (2009).

BART DE MEESTER is an Associate at the Geneva Office of Sidley Austin LLP. Prior to joining Sidley, he worked as Legal Affairs Officer at the WTO Trade in Services Division. Before joining the WTO, he was researcher at the Institute for International Law of the University of Leuven. He wrote a Ph.D thesis on European and international liberalization of international trade in banking services as Scholar of the Fund for Scientific Research Flanders (FWO Vlaanderen). Bart has published several articles on international economic law, including in *Journal of International Economic Law*, *Journal of World Trade* and *European Business Law Review*. He co-authored a book with Prof. Dr Jan Wouters, providing a legal and institutional analysis of the WTO (2007). He has taught lectures on international economic law and European business law at both undergraduate and graduate level.

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YUSUF ATIKU ABDALLA is a Ugandan trade expert and senior official at the Bank of Uganda (the central bank of Uganda). He has extensive experience as a trade policy advisor, trade negotiator, economic analyst and researcher, spanning nearly three decades. Over the period, he has provided numerous technical guidance as well as economic and trade policy analyses for policy-makers at high levels in Uganda, including the Ministry of Trade, Industry and Co-operatives, the Bank of Uganda and the Ministry of Finance, Planning and Economic Development. Yusuf completed his undergraduate and graduate studies at Makerere University and the Department of Economics, University of Michigan, respectively. He has also undertaken and completed other postgraduate studies and training in trade policy; quantitative development economics; energy economics and management at the Harvard Kennedy School, the WTO Centre for Training and Technical Cooperation, the University of Warwick and the University of Pennsylvania, respectively. Yusuf's contribution to this book chapter was made when he was an official at the Research Department of the Bank of Uganda. He is currently on assignment as Regional Trade Policy Advisor at the Secretariat of the Common Market for Eastern and Southern Africa (COMESA) in Lusaka, Zambia, on posting by the Commonwealth Secretariat, London.

JOAN APECU works in the Council and Trade Negotiations Committee Division of the WTO. Prior to that (1999–2004), she served in several capacities in the Uganda Law Reform Commission, including as Senior Legal Officer in charge of Law Reform and Research, where she undertook law reform projects in several branches of law. Joan had an academic attachment with the Permanent Mission of Uganda to the United Nations and other International Organizations in Geneva. She has also been an assistant lecturer at the Faculty of Law at the Uganda Christian University Mukono in Uganda. She holds a Ph.D (magna cum laude) in international studies with a specialization in international trade law from the Graduate Institute of International and Development Studies, in Geneva; a Masters of Law (cum laude) in international trade and investment law from the University of Pretoria in collaboration with the Amsterdam Law School; a postgraduate diploma in legal practice from the Law Development Center in Uganda; and a Bachelor of Laws Degree from Makerere University, Uganda. She is an Advocate of the High Court of Uganda.

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TOMER BROUDE is the Sylvan M. Cohen Chair in Law, Senior Lecturer at the Hebrew University of Jerusalem in the Faculty of Law and Department of International Relations and the Academic Director of the Minerva Center for Human Rights in Jerusalem. He has taught international law at various law schools in Israel, at the University of Toronto, Georgetown University Law Center, Johns Hopkins University's School of Advanced International Studies, Università Commerciale Luigi Bocconi in Milan, Gujarat National Law University and the Duke University–University of Hong Kong Asia–America Institute in Transnational Law. His fields of research are in international public law, with a focus on international economic law, international trade and the WTO. His publications include *International Governance in the WTO: Judicial Boundaries and Political Capitulation* (2004); *The Shifting Allocation of Authority in International Law: Considering Sovereignty, Supremacy and Subsidiarity* (2008); *The Politics of International Economic Law* (2010), and articles and essays that have appeared in the *Vanderbilt Law Review*, *Journal of World Trade*, *World Trade Review*, *Journal of International Economic Law*, *Journal of World Intellectual Property Law* and *Columbia Journal of Transnational Law*, among others. In 2007–2009, he served as Co-Chair of the International Economic Law Interest Group of the American Society of International Law; he is one of the founders of the Society of International Economic Law and a member of its Executive Council, and a Member of the International Law Association's Committee on the International Law of Sustainable Development.

RUPA CHANDA is Professor of Economics at the Indian Institute of Management (IIM) Bangalore. She has a Ph.D in economics from Columbia University and a Bachelor's Degree from Harvard University. Prior to joining IIM Bangalore, she was an economist at the International Monetary Fund. She has undertaken research and consulting assignments for many multilateral and Indian organizations. Her research interests include services trade and migration with a focus on information technology and health care, WTO issues and regional trade. She is a member of the Indian Commerce Ministry's Expert Group on Services and was formerly a member of the Indian Planning Commission's High Level Group on Services.

PANAGIOTIS DELIMATIS is Associate Professor of Law and Co-Director of the Tilburg Law and Economics Center (TILEC) at Tilburg University, the Netherlands. Panagiotis has extensive research

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and teaching expertise in European and international economic law. His research focuses on regulatory diversity, domestic regulatory reform, good governance and institutional design, and the effects of unduly burdensome domestic regulations on factor mobility. Panagiotis has published extensively on international trade and European law issues in top refereed journals, including the *European Journal of International Law*, *Journal of International Economic Law*, *Common Market Law Review*, *Journal of World Trade* and *World Trade Review*. He is the author of *International Trade in Services and Domestic Regulations: Necessity, Transparency, and Regulatory Diversity* (2007). He also co-edited two collective volumes, the first on *The Prospects of International Trade Regulation* (2011) and the second on *Financial Services at the Crossroads: Implications for Supervision, Institutional Design and Trade* (2011).

HENRY GAO is Associate Professor of Law at Singapore Management University. With law degrees from three continents, he started his career as the first Chinese lawyer at the WTO Secretariat. Before moving to Singapore in late 2007, he taught law at University of Hong Kong, where he was also the Deputy Director of the East Asian International Economic Law and Policy Program. He has taught at the IELPO programme in Barcelona and the Academy of International Trade Law in Macau, and was the Academic Coordinator to the first Asia-Pacific Regional Trade Policy Course officially sponsored by the WTO. Widely published on issues relating to China and WTO, Henry has advised many national governments and the WTO, the World Bank, the Asian Development Bank, the Asia-Pacific Economic Cooperation and the Association of Southeast Asian Nations on trade issues. Henry sits on the Advisory Board of the WTO Chairs Programme, which was established by the WTO Secretariat in 2009 to promote research and teaching on WTO issues in leading universities around the world.

PRALOK GUPTA has a Ph.D in economics and social sciences from Indian Institute of Management (IIM) Bangalore. He is currently working at the Industrial Finance Corporation of India in a managerial position. He has been a visiting and full-time faculty member at various Indian institutions, including the Indo-German Chamber of Commerce. He has also served in the State Audit Services of the Government of Uttar Pradesh. He has been engaged in various consultancy and research projects for corporate bodies, the government and multilateral

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institutions. His research interests include international trade and related issues concerning poverty and the environment, economics of services trade, regulations, WTO-related issues and international migration.

TINNE HEREMANS holds a Master Degree in Law from the Katholieke Universiteit Leuven (2002) and LLM from Cornell Law School, United States (2004). From 2005 onwards, she pursued a doctoral dissertation at the Institute for European Law, KUL, on the basis of an FWO fellowship. She defended her dissertation on 'Professional Services in the EU Internal Market: Quality Regulation and Self-Regulation' in March 2010. In November 2009, she joined the European Affairs Programme at the Egmont Institute. Her current areas of research include institutional matters and single market policies.

LIOR HERMAN is a Lecturer at the Department of International Relations at the Hebrew University of Jerusalem. His fields of research include international and European political economy, with an emphasis on trade and services, regional integration, governance and international organizations.

KOICHI IWAI is Research Fellow at the Financial Services Agency, Government of Japan. Previously, he held positions at Nomura Securities, Mizuho Corporate Bank, and the Bank of Japan. He has a PhD in international public policy from Osaka University, a Master's Degree in applied finance from Macquarie University, and a Bachelor's Degree from the University of Tokyo.

MASAMICHI KONO is Vice Commissioner for International Affairs, the Financial Services Agency, Government of Japan (JFSA). In his current capacity, he represents the JFSA in various international bodies and meetings, and is responsible for coordinating policies relating to international affairs for the JFSA. He was also Chairman of the IOSCO Technical Committee from April 2011 to May 2012 and is now serving as Chairman of the IOSCO Board. He has had a long career in financial supervision and the regulation of financial services, both in Japan and in the international arena, since joining the public service in 1978. He was Secretary to the WTO Financial Services Committee between 1994 and 1999, and Counsellor of the WTO Trade in Services Division. He has also served for four years at the Organisation for Economic Co-operation and Development (OECD) Secretariat. Since 2005, he is Visiting Professor at

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University of Hiroshima, Graduate School of Social Sciences (Finance Program). He is a graduate of Tokyo University.

MARKUS KRAJEWSKI is Professor of Public and International Law at the University of Erlangen-Nuremberg, Germany, and a visiting professor at the World Trade Institute, in Berne. Previously he held positions at the universities of Bremen and Potsdam and at King's College London. His research interests include international and European law, in particular constitutional and institutional issues of WTO law, trade in services, external relations of the European Union and the treatment of public services under European and international law. He is a regular consultant on international trade law for governmental institutions and non-governmental organizations. In the academic year 2009 to 2010 he directed a capacity-building project at the Faculty of Law of Addis Ababa University in support of Ethiopia's accession to the WTO. Since 2011, he has been a member of the Committee on International Trade Law of the International Law Association (ILA). Among his publications are *National Regulation and Trade Liberalization in Services* (2003), *Wirtschaftsvölkerrecht* (2009) and *Grundstrukturen des Rechts öffentlicher Dienstleistungen* (2011), as well as numerous articles in international journals and edited volumes.

NIK AHMAD KAMAL NIK MAHMUD, Ph.D (Aberdeen), is a Professor of Law at the Kulliyyah (Faculty) of Laws, International Islamic University, Malaysia and currently also the Deputy Rector (Student Affairs) of the university. His research interest is in industrial relations and labour law and recently he has ventured into research and publication in international trade law, biotechnology law and access to justice. He is a member of the WTO and Globalization research cluster of the International Islamic University Malaysia. He has served as a consultant for various projects for the Ministry of Higher Education Malaysia and has been actively involved in the promotion of teaching international labour standards in universities in the Asian region under the auspices of the ILO Bangkok office. That project gave birth to the Asian Society of Labour Law and he was the first President of the society from 2008 until 2010. His recent publications include, 'Biosafety Protocol, SPS Agreement and Export and Import Control on LMOs/GMOs', *International Trade Law and Policy* 7(2) (2008) and 'The WTO Rules Versus Multilateral Environmental Agreements: The Search for Reconciliation', *Macquarie Journal of International and Comparative Environmental Law* 5 (2008).

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HAMID MAMDOUH is Director of the Trade in Services Division of the WTO. This division is responsible for servicing the WTO Council for Trade in Services, which oversees the implementation of the General Agreement on Trade in Services (GATS). The division is also responsible for providing legal, policy and technical advice to WTO members. Prior to that he was a Senior Counsellor in the Services Division. He had been the Secretary of the WTO Council for Trade in Services since the establishment of the WTO, in 1995. During that time, he was also responsible for all legal affairs in the area of trade in services. During the Uruguay Round negotiations, his responsibilities included legal matters relating to the drafting of GATS. His previous positions in the General Agreement on Tariffs and Trade (GATT) include: Assistant to the GATT Deputy Director-General and legal advisor on GATT dispute settlement. Prior to that he was a member of the diplomatic service of Egypt. As a career diplomat for commercial and economic affairs, his previous posts include: GATT representative of Egypt in Geneva, trade policy advisor to the Minister of Economy and Foreign Trade of Egypt, commercial attaché of the Egyptian Embassy in Canberra (Australia), and Egypt's representative to the United Nations Economic Commission for Africa in Addis Ababa (Ethiopia). As a trained lawyer legal matters have constituted an important part of his work throughout his career.

ANDREW MITCHELL is Professor at Melbourne Law School, Director of the Global Economic Law Network, Assistant Director of Research at the Melbourne School of Government, a member of the Indicative List of Panelists to hear WTO disputes, and a member of the Energy Charter Roster of Panelists. He has previously practised law with Allens Arthur Robinson (now Allens Linklaters) and consults for states, international organizations and the private sector. Andrew has taught law in Australia, Canada and the United States and is the recipient of three major current grants from the Australian Research Council and the Australian National Preventive Health Agency. He has published approximately 100 academic books and journals and is a Series Editor of the Oxford University Press International Economic Law Series, an Editorial Board Member of the *Journal of International Economic Law* and a General Editor on the *Journal of International Dispute Settlement*. He has law degrees from Melbourne, Harvard and Cambridge.

ERICA MOESER has been the President of the National Conference of Bar Examiners since 1994. She is a former chairperson of the

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Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association and has served as a law school site evaluator, as a member of the Section's Accreditation Committee, and as the co-chairperson of the Section's Bar Admissions Committee. She worked as the director of the Board of Bar Examiners of the Supreme Court of Wisconsin for seventeen years before joining the National Conference. Erica holds the following degrees: BA (geology), Newcomb College of Tulane University, 1967; MS (curriculum and instruction), University of Wisconsin, 1970; and JD, University of Wisconsin, 1974. She was admitted to practise law in Wisconsin in January 1975. She holds honorary degrees from three law schools. She has taught Professional Responsibility as an adjunct at the University of Wisconsin Law School.

HILDEGUNN KYVIK NORDÅS joined the OECD in 2005 where she works on trade in services. Before the OECD, she worked at the WTO Secretariat, and at the Christian Michelsen Institute and the University of Bergen, both in Norway, where her areas of research and teaching were international trade, economic growth and development. She has published a number of journal articles and book chapters in these fields. She has led a number of projects providing technical assistance and policy advice in developing countries, including developing a macroeconomic model with the Planning Commission of Tanzania. She has been a visiting scholar to the School of Government at the University of Western Cape and to the University of Kwazulu-Natal, both in South Africa, and to Stanford University, United States. She holds a Ph.D in economics.

KRISHNA OOLUN is presently the Executive Director of the Information and Communications Technology (ICT) Authority of Mauritius, the National Regulatory Authority for ICT. He was formerly Senior Lecturer at the University of Mauritius. Krishna is the holder of a Degree in electrical and electronic engineering from the University of Mauritius; MSc in digital instrumentation and imaging systems from UMIST, United Kingdom; Ph.D in communications engineering; and MBA in information technology management, University of Leicester, United Kingdom. He is a Chartered Engineer of the Council of Engineers of the United Kingdom. He is the author of several publications in the field of engineering and ICT regulations. He is the Editor in Chief of the on-line *Journal of Engineering and Technology Research*. He has also been part of consultancy assignment teams for the SADC and COMESA

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regions in the field of ICT policy and regulation, and has been involved in the development of various ICT policy and regulatory frameworks for Mauritius.

DARRELL PORTER is the Deputy Executive Director of the Australian Office of Best Practice Regulation. The Office of Best Practice Regulation plays a central role in assisting departments and agencies to meet the Australian Government's best practice regulation requirements and in monitoring and reporting on their performance. It serves a similar role for the Council of Australian Governments in relation to national regulatory proposals.

YOSHITAKA SAKAI is Economist at the Financial Services Agency, Government of Japan. Previously, he served as a technical teaching staff member in the International Monetary Fund. He has a Bachelor's Degree from the University of Tokyo.

IAIN SANDFORD is Counsel in the Geneva office and a member of Sidley Austin's International Trade and Dispute Resolution group. Iain has diverse WTO and international trade experience. He has advised clients on WTO and investment treaty issues, represented companies and governments in various safeguard, anti-dumping and countervailing duty cases, and acted regularly for clients on sensitive export control and sanctions compliance matters. In previous roles, he served as a WTO dispute settlement panellist, headed the international trade practice of a leading Australian law firm, served as a legal officer in the WTO Appellate Body Secretariat, and was a lawyer in the New Zealand Ministry of Foreign Affairs and Trade, where he was involved in a number of New Zealand's WTO cases. Iain is an honorary adjunct Professor of Law at the University of Canberra and is an editorial board member of World Export Control Review.

IRENE KAGGWA SEWANKAMBO is Head of Research and Coordinator at the Office of Executive Director Uganda Communications Commission. Irene heads the research and development function at Uganda's Communications sector regulatory authority, whose mandate covers the broadcasting, postal and telecommunications services. She possesses extensive experience in sector planning, policy development, and implementation of related initiatives such as quality of services regulation, numbering resource management, conducting usage studies, as well as

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processes for set up of universal fund. In her current role, Irene has enhanced the Commission's collaborations towards enhancement of ICT research and innovation as well as programmes geared to development of ICT for environmental sustainability. In addition to research and development, Irene is the Corporate Coordinator for UCC. She holds an MSc. in communications systems and signal processing from University of Bristol, a Bachelor's Degree in electrical engineering from Makerere University and is completing an MSc. in economic management and policy.

SIVA SOMASUNDRAM is Head of the International Regulatory Affairs department of Australia Post. He is a former senior government official and trade negotiator and has served as Chair of the WTO Working Party on GATS Rules.

LAUREL S. TERRY is Harvey A. Feldman Distinguished Faculty Scholar and Professor of Law at Penn State Dickinson School of Law in Carlisle, Pennsylvania. She writes and teaches about legal ethics and the international and inter-jurisdictional regulation of the legal profession. She is a long-time participant in what is now called the International Bar Association Committee on International Trade in Legal Services and the American Bar Association's Task Force on International Trade in Legal Services. She has written extensively about the GATS and legal services, including in limerick form: 'The GATS and Legal Services in Limerick', *Michigan State Journal of International Law* 15 (2007).

JOEL P. TRACHTMAN is Professor of International Law at the Fletcher School of Law and Diplomacy. Recent books include *The International Law of Economic Migration: Toward the Fourth Freedom* (2009); *Ruling the World: Constitutionalism, International Law, and Global Governance* (2009); *Developing Countries in the WTO Legal System* (2009); *The Economic Structure of International Law* (2008); and *International Law and International Politics* (2008). He has consulted for the United Nations, the OECD, APEC, the World Bank, the Organization of American States, and the US Agency for International Development. Joel has served as a member of the boards of the *American Journal of International Law*, *European Journal of International Law*, *Journal of International Economic Law*, *Cambridge Review of International Affairs* and *Singapore Yearbook of International Law*. He is a member of the bar of the State of New York. From 1998 to 2001, he was Academic

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Dean of the Fletcher School, and during 2000 and 2001, he served as Dean ad interim. In 2002, he was Manley O. Hudson Visiting Professor of Law, and in 2004 he was Nomura Visiting Professor of International Financial Systems, at Harvard Law School. He graduated in 1980 from Harvard Law School, where he served as Editor in Chief of the *Harvard International Law Journal*. His undergraduate education was at the London School of Economics and Columbia College.

TANIA VOON is Professor and Associate Dean (Research) at Melbourne Law School, University of Melbourne. She is a former Legal Officer of the WTO Appellate Body Secretariat and has previously practised law with Mallesons Stephen Jaques and the Australian Government Solicitor. In addition to her current role, Tania has taught law at Georgetown University, the University of Western Ontario, the Australian National University, Monash University, and Bond University. Tania undertook her Master of Laws at Harvard Law School and her Ph.D in law at the University of Cambridge. She has published widely in the areas of public international law and international economic law. She is the author of *Cultural Products and the World Trade Organization* (2007) and a member of the Indicative List of Governmental and Non-Governmental Panelists for resolving WTO disputes and the Roster of Panelists to assist in the resolution of trade disputes between parties to the Energy Charter Treaty. Tania has provided expert advice and training to entities such as the Australian Department of Foreign Affairs and Trade, the WTO, the World Health Organization, Telstra and the McCabe Centre for Law and Cancer.

LAUREN WIGHT is a policy officer in the Office of Best Practice Regulation within the Australian Department of Finance and Deregulation. Lauren is part of a team responsible for assisting departments and agencies to meet the Australian Government's and Council of Australian Governments' best practice regulation requirements. She has worked on a wide range of regulatory proposals in areas including the labour market, tertiary education and health. She has a degree in finance from the Australian National University.

THAM SIEW YEAN, Ph.D (Rochester), is Professor in international trade and a principal research fellow at the Institute of Malaysian and International Studies (IKMAS), Universiti Kebangsaan Malaysia. She has research interests and publications in foreign direct investment,

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economic integration and trade in services (including education services). She has served as a consultant in national and international agencies such as the Malaysian Productivity Corporation, MITI, the Ministry of Human Resources, and the Ministry of Higher Education, as well as the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), Asian Development Bank, Asian Development Bank Institute, World Bank Institute, and the World Bank. Her recent publications include 'Evolution of Trade Policy Formulation in Malaysia' in *Complexity of FTAs: A Key Issue in Malaysian Trade Policy* (2010); and 'Trade in Higher Education Services in Malaysia: Key Policy Challenges', *Higher Education Policy* 23 (2010).

RUOSI ZHANG is Counsellor in the Trade in Services Division of the WTO Secretariat. She has been working with the WTO Secretariat since 2003 and is responsible for logistics and express delivery services. Before that, she was researcher in international law at the Institute of Law, Chinese Academy of Social Sciences. She received BA and LLM Degrees from Peking University of China and an LLD degree from University of Paris V in France.

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FOREWORD

Roberto Azevêdo,
WTO Director-General

Domestic regulation of services has a significant impact on the liberalization of trade in services. WTO members have agreed to negotiate a set of disciplines to ensure that such regulations are not unduly burdensome on trade. This book contains analyses and case studies from academics, regulators and trade experts.

Some of the contributions explore the scope or limitations of WTO legal principles to promote domestic regulatory reform. Others provide case studies on how domestic regulation is implemented in practice and the potential trade consequences. The case studies include a discussion of country-specific challenges and experiences in regulating important service sectors, such as finance, telecommunications, distribution, legal services, education, health, postal and logistics services, as well as the role of regulatory impact analysis. The book concludes with some reflections on what needs to be done to address the interface between domestic regulation and trade in services.

The new generation of services trade agreements is increasingly concerned with addressing regulatory issues. By examining the scope and potential of WTO legal principles against the backdrop of actual regulatory experiences, this book ventures onto new ground. Anyone familiar with WTO negotiations on domestic regulation will certainly appreciate the demand from both trade and regulatory communities for this type of information.

The book will help trade negotiators learn more about regulatory objectives and challenges and, in turn, how best to shape trade disciplines that would take these into account. Equally, those concerned with the regulation of services sectors will gain a greater understanding of how WTO legal principles can help promote and consolidate rather than impede domestic regulatory reform.

This book is a timely and valuable contribution to a better understanding – both in Geneva and across the globe – of the sensitive and sometimes complex interplay between the push for liberalization and the demands for domestic regulation.

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ABBREVIATIONS

3PL	third party logistics
AANZFTA	ASEAN–Australia–New Zealand Free Trade Agreement
ABA	American Bar Association
ACCA	Australian Competition and Consumer Act 2010 (Cth)
ACCC	Australian Competition and Consumer Commission
ACTIS	ASEAN–China Agreement on Trade in Services
ADR	alternative dispute resolution
AFAS	ASEAN Framework Agreement on Services
AJCEP	ASEAN–Japan Comprehensive Economic Partnership
AKFTA	ASEAN–Korea Free Trade Agreement
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
AtB	at the border
ATM	automatic teller machine
BPO	business process outsourcing
BPR	basic postage rate
BtB	behind the border
BWA	Broadband Wireless Access
CA	Certification Authority
CAGR	compound annual growth rate
CCM	Competition Commission of Mauritius
CDO	collateralized debt obligation
CGE	computable general equilibrium
CPI	consumer price index
CT	China Telecom
DSU	WTO Understanding on Rules and Procedures Governing the Settlement of Disputes
EAC	East African Community
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECON	Committee on Economic and Monetary Affairs
ECtHR	European Court of Human Rights

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EGSM	Extended Global System for Mobile Communications
ETF	exchange trade fund
ETP	Economic Transformation Plan
FDI	foreign direct investment
FIC	Foreign Investment Committee
FIEA	Financial Instruments and Exchange Act (Japan)
FIPB	Foreign Investment Promotion Board (India)
FSA	Financial Services Agency (Japan)
G20	Group of 20
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GSM	Global System for Mobile Communications
IBA	International Bar Association
ICJ	International Court of Justice
ICT	information and communications technology
ICTA	Information and Communication Technologies Authority (Mauritius)
IIA	international investment agreement
ILD	international long distance
IMF	International Monetary Fund
ISRO	Indian Space Research Organisation
IT	information technology
ITES	IT-enabled services
ITR	international telecommunications regulation
ITU	International Telecommunication Union
J-REIT	Japanese real estate investment trust
LAN	National Accreditation Board (Lembaga Akreditasi Negara)
LDC	least developed country
LPI	Logistics Performance Index (World Bank)
MAFTA	Malaysia–Australia Free Trade Agreement
MCI	Medical Council of India
MFN	most favoured nation
MII	Ministry of Information Industry (China)
MIIT	Ministry of Industry and Information Technology (China)
MJEPA	Malaysia–Japan Economic Partnership Agreement
MNZFTA	Malaysia–New Zealand Free Trade Agreement
MOHE	Ministry of Higher Education (Malaysia)
MOU	Memorandum of Understanding
MPFTA	Malaysia–Pakistan Free Trade Agreement
MPT	Ministry of Post and Telecommunication (China)
MQA	Malaysian Qualifications Agency

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MQF	Malaysian Qualifications Framework
MRA	Mutual Recognition Agreement
MSP	mobile service provider
NAFTA	North American Free Trade Agreement
NCBE	National Conference of Bar Examiners
Netcom	China Net Communications
NGN	next generation network
NIE	New Institutional Economics
NOBC	National Organization of Bar Counsel
OBPR	Office of Best Practice Regulation (Australia)
OECD	Organisation for Economic Co-operation and Development
PHEI	private higher education institution
PIN	personal identification number
PKI	public key infrastructure
PMR	OECD Product Market Regulation
PT	Permit to Teach
PTA	preferential trade agreement
REIMS Agreement	Remuneration for Exchange of International Mail Service Agreement
RG	Registrar General
RIA	regulatory impact analysis
RIS	regulation impact statement
RTA	regional trade agreement
SIDS	small island development state
SIM card	subscriber identity module card
SME	small and medium-sized enterprise
SMS	Short Message Service
SOE	state-owned enterprise
SPS	sanitary and phytosanitary
SPS Agreement	WTO Agreement on the Application of Sanitary and Phytosanitary Measures
TBT	technical barriers to trade
TBT Agreement	WTO Agreement on Technical Barriers to Trade
TEU	Treaty on European Union
TRI	Trade Restrictiveness Index
TRIPS Agreement	WTO Agreement on Trade-Related Aspects of Intellectual Property Rights
UBE	Uniform Bar Examination (United States)
UCC	Uganda Communications Commission
UNCTAD	United Nations Conference on Trade and Development
UPC	Universal Postal Convention

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xxvi	LIST OF ABBREVIATIONS
UPU	Universal Postal Union
USF	universal service fund
USO	universal service obligation
USPS	United States Postal Service
USSD	Unstructured Supplementary Service Data
VoIP	Voice over Internet Protocol
VSAT	very small aperture terminal
WHO	World Health Organization
WPDR	Working Party on Domestic Regulation
WPPS	Working Party on Professional Services
WTO	World Trade Organization
WTO	Agreement Establishing the World Trade Organization
Agreement	