



The digital trade policy environment in Latin America and the Caribbean

Martina F. Ferracane
Alejandro Fredes
Tomás Rogaler
Nanno Mulder



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This document was prepared by Martina F. Ferracane and Alejandro Fredes, consultants of the International Trade Unit of the International Trade and Integration Division of the Economic Commission for Latin America and the Caribbean (ECLAC), Tomás Rogaler, research intern in the Unit, and Nanno Mulder, Chief of the Unit. The authors would like to thank the following research interns for their participation in the data collection for the countries in the region: Guillermo Caballero Ferreira, Simón González, Murilo Lubambo, Ignacio Sánchez González, Bianca Rocha VanderLei, Manasa Venkatachalam, Zhang Wenqing, Siyu Yu, and Laura Zajackowska.

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Acronyms

CAB	Conformity Assessment Body
DPIA	Data Protection Impact Assessment
DPO	Data Protection Officer
ECA	Economic Commission for Africa
ECIPE	European Centre for International Political Economy
ECLAC	Economic Commission for Latin America and the Caribbean
ESCAP	Economic and Social Commission for Asia and the Pacific
EUI	European University Institute
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GPA	Government Procurement Agreement
ICT	Information and Communications Technologies
IPR	Intellectual Property Rights
ISPs	Internet Service Providers
ICC	International Chamber of Commerce
ITA	Information Technology Agreement
LAC	Latin America and the Caribbean
MFN	Most Favoured Nation
MRA	Mutual Recognition Agreement
NTM	Non-Tariff Measures
RDTI	Regional Digital Trade Integration
PCT	Patent Cooperation Treaty
SDoC	Supplier Declaration of Conformity
SMP	Significant Market Power
UNCITRAL	United Nations Commission on International Trade Law
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Right Organization
WPPT	WIPO Performances and Phonogram Treaty
WTO	World Trade Organization

Contents

Abstract	7
Introduction	9
I. Regional digital trade integration database and index	11
II. Main findings for the Latin America and the Caribbean region	15
III. Main findings by Pillar	21
IV. Conclusions and recommendations	35
Bibliography	37
Annex	39
Figures	
Figure 1	Latin America and the Caribbean (selected countries): number of restrictions by country, 2022
	15
Figure 2	Latin America and the Caribbean (selected countries): number of enabling policies by country, 2022.....
	16
Figure 3	Latin America and the Caribbean (selected countries): RDTI index by country, 2022
	17
Figure 4	Latin America and the Caribbean (21 countries): average RDTI index by Pillar, 2022.....
	18
Figure 5	Latin America and the Caribbean (selected countries): RDTI index and regulatory similarity by Pillar, 2022
	19
Figure 6	Latin America and the Caribbean (selected countries): RDTI index in Pillar 1 (tariffs and trade defence), 2022
	22

Figure 7	Latin America and the Caribbean (selected countries): tariffs applied on ICT goods imported from the LAC region (weighted average), 2022.....	22
Figure 8	Latin America and the Caribbean (selected countries): share of duty-free imports of ICT goods from the LAC region, 2022	23
Figure 9	Latin America and the Caribbean (selected countries): RDTI index in Pillar 2 (public procurement), 2022	24
Figure 10	Latin America and the Caribbean (selected countries): RDTI index in Pillar 3 (foreign direct investment), 2022.....	24
Figure 11	Latin America and the Caribbean (selected countries): RDTI index in Pillar 4 (intellectual property rights), 2022	25
Figure 12	Latin America and the Caribbean (selected countries): RDTI index in Pillar 5 (telecom infrastructure and competition), 2022.....	27
Figure 13	Latin America and the Caribbean (selected countries): RDTI index in Pillar 6 (cross-border data policies), 2022	28
Figure 14	Latin America and the Caribbean (selected countries): RDTI index in Pillar 7 (domestic data policies), 2022.....	29
Figure 15	Latin America and the Caribbean (selected countries): RDTI index in Pillar 8 (intermediary liability), 2022.....	30
Figure 16	Latin America and the Caribbean (selected countries): RDTI index in Pillar 9 (content access), 2022	31
Figure 17	Latin America and the Caribbean (selected countries): RDTI index in Pillar 10 (quantitative trade restrictions), 2022.....	32
Figure 18	Latin America and the Caribbean (selected countries): RDTI index in Pillar 11 (standards), 2022	33
Figure 19	Latin America and the Caribbean (selected countries): RDTI index in Pillar 12 (online sales and transactions), 2022.....	34

Abstract

This report presents significant findings from the Regional Digital Trade Integration (RDTI) project and highlights similarities and differences among the LAC economies. After introducing the RDTI database and index methodology, the report shows the main RDTI index scores by country and pillar. Jamaica, with the lowest score of 0.14 for Jamaica, has the most open regulatory environment for digital trade in the region. On the other hand, with the highest score of 0.62, Cuba shows a regulatory environment that is quite restrictive for digital trade integration. The report also summarizes the findings for each of the 12 Pillars that compose the RDTI index and offers a snapshot of the regulatory similarity across Pillars, highlighting the Pillars that offer potentially low-hanging fruits for regulatory harmonization in the region. It concludes with some policy recommendations derived from the analysis.

Introduction

Under the Regional Digital Trade Integration (RDTI) project, the United Nations Economic Commission for Latin America and the Caribbean (ECLAC) collaborated with the European University Institute (EUI) on the data compilation and analysis of the regulatory environment for digital trade in 21 countries in Latin America and the Caribbean (LAC).¹ This report presents significant findings from the project and highlights similarities and differences among the LAC economies.

This report is structured as follows. Section 2 reviews the methodology to collect policy information as part of the RDTI database and to aggregate the detailed information into the RDTI index. This index synthesizes the increasingly complex digital trade policies and regulations from a trade and business perspective. It offers a synthesized picture of the regulatory environment on digital trade by assigning to each country a score that goes from zero (fully open regulatory environment) to one (highly restrictive regulatory environment).

Section 3 summarizes the findings for the 21 countries analyzed in the region. The section presents aggregate statistics for the number of restrictions and enabling policies implemented by the countries across the 12 Pillars and 65 indicators that compose the RDTI database. It also shows the main RDTI index scores by country, which range from 0.14 for Jamaica (the lowest) to 0.62 for Cuba (the highest), and by Pillar, which vary from 0.10 for the Pillar covering policies on content access (most open) to 0.52 for the Pillar covering the intermediary liability regime (least open). Finally, the section presents a snapshot of the regulatory similarity across Pillars, highlighting the Pillars that offer potentially low-hanging fruits for regulatory harmonization in the region.

Section 4 shows the findings for each of the 12 Pillars, presenting the RDTI index for the 21 countries and a summary of the policies that represent their scores. The final section offers conclusions and some policy recommendations derived from the analysis.

¹ The countries covered are Argentina, Bolivia (P.S. of), Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Peru, Paraguay, Trinidad and Tobago, Uruguay, and Venezuela (B.R. of).

I. Regional digital trade integration database and index

The RDTI database and index have been developed by the European University Institute, UN-ECLAC, and two other Regional Commissions of the United Nations: the UN Economic Commission for Africa (UN-ECA) and UN Economic and Social Commission for Asia and the Pacific (UN-ESCAP). The RDTI framework reviews the digital trade policy environment that applies to digital trade, referring to trade in digitally related services and ICT goods (Ferracane, 2022).

The framework covers two components of digital trade policies, namely restrictions and enabling policies.² The first component contains regulatory policies that may restrict digital trade across borders. These include border and behind-the-border regulations that create differential treatment between either domestic and foreign providers or online and offline services. The second component covers enabling policies expected to support a conducive policy environment for digital trade. These refer to both domestic policies that enhance trust in digital trade (for example, data and consumer protection laws) and the participation in international agreements to improve cross-border interoperability (for example, the signature of the World Trade Organization (WTO)'s Reference Paper on Telecommunications and the adoption of the United Nations Commission on International Trade Law (UNCITRAL)'s Model Laws on Electronic Commerce and Electronic Signatures).

Overall, the RDTI database includes 65 indicators in 12 Pillars, which cover the main policy areas related to digital trade, following the methodology presented in Ferracane (2022). The 12 policies areas include:

- (i) Pillar 1: tariffs and trade defence measures related to trade in ICT goods with partners in the region;
- (ii) Pillar 2: policies related to the participation in public procurement of ICT goods and services;
- (iii) Pillar 3: policies on foreign direct investment in sectors related to digital trade;

² The list of indicators is summarised in annex, while the entries in the RDTI database can be consulted online at <https://dti.eui.eu/database/>.

- (iv) Pillar 4: Intellectual Property Rights (IPRs) policies and the balance between protecting individual rights to intellectual property and fostering innovation;
- (v) Pillar 5: policies and regulations regarding telecommunications infrastructure and competition;
- (vi) Pillar 6: cross-border data policies applied for different reasons, including data protection and security;
- (vii) Pillar 7: domestic data policies governing the use and processing of data in the economy, including a data protection law;
- (viii) Pillar 8: measures governing intermediary liability, balancing the need for holding intermediaries responsible for illegal content over the internet and not restricting their participation in digital trade with onerous obligations;
- (ix) Pillar 9: policies related to content access, balancing the interest to reduce illegal online content and the business costs for the intermediaries to conform with the requirements and the interruption to providing their services;
- (x) Pillar 10: quantitative trade restrictions, covering non-tariff measures that can limit the import and export of ICT goods and online services;
- (xi) Pillar 11: standards applied to ICT goods and online services, especially in cases of deviations from internationally recognized best practices;
- (xii) Pillar 12: policies related to online sales and transactions, including regulations on online purchase, delivery, online payments, and domain names, as well as legal recognition for electronic signatures and the existence of relevant consumer protection laws.

The information in the database is aggregated into an index through a detailed methodology with specific scores and weights assigned to each measure. Each indicator is assigned a score that ranges from zero to one. The impact of each policy measure is estimated following the methodology summarised in the forthcoming publication by ESCAP, ECA, and ECLAC (2023). A score greater than zero indicates that at least one of the following conditions occurs:

- Differential treatment between domestic and foreign providers;
- Differential treatment between online and offline services;
- Lack of adoption of important international norms (such as international agreements, legislation or legal mechanisms) that facilitate interoperability across jurisdictions.

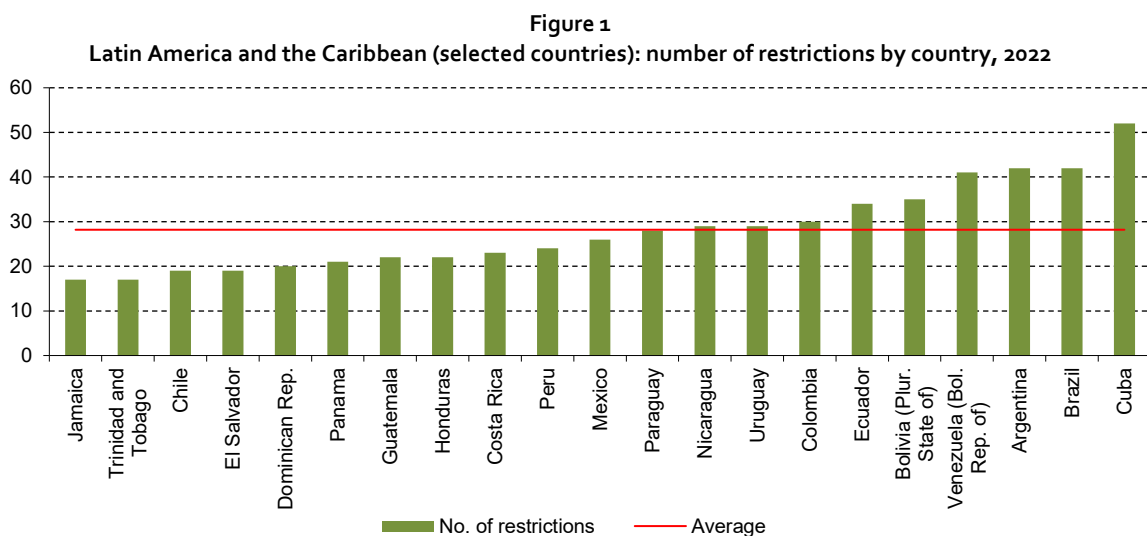
Afterward, an index for each of the 12 Pillars is calculated as a weighted average of the scores for each indicator. The weights assigned to each indicator are derived from a study on the Digital Trade Restrictiveness Index (DTRI) of the European Centre for International Political Economy (ECIPE) (Ferracane et al., 2018) and have been updated through additional consultations with experts that contributed to identifying the importance of each indicator within the considered Pillar. A higher weight suggests that the measure has a more substantial impact on digital trade. The indexes for the Pillars range from zero to one, summarising how the regulatory environment in the selected policy area is conducive to digital trade integration. An index of zero shows an environment with conducive policies and virtually no restrictions for digital trade, while a score of one indicates a highly restrictive environment for digital trade.

The final RDTI index (RDTII) is calculated as an unweighted average of the 12 indexes for each of the Pillars. The index, which ranges from zero to one, aims to give a sense of the policy ecosystem faced by digital trade businesses across various policy areas and summarises how the regulatory environment can support digital trade integration in the region and beyond.

The RDTII reviews the increasingly complex digital trade policies and regulations from a trade and business perspective. It allows policymakers to understand where their economies stand in comparison to others. The framework does not capture the full range of social, economic, security, and environmental concerns that must be considered when engaging in regulatory reform.

II. Main findings for the Latin America and the Caribbean region

The RDTI database contains both restrictions and enabling measures. Figure 1 ranks countries based on the number of measures listed in the RDTI database that may restrict digital trade. Each indicator includes one or more measures reflecting the country's regulatory environment in the relevant sectors. The figure shows the restrictions in the countries, with all policies treated equally regardless of the level of restrictiveness. All these policies are expected to affect trade in ICT goods and digital services.



Source: Elaboration by the authors.

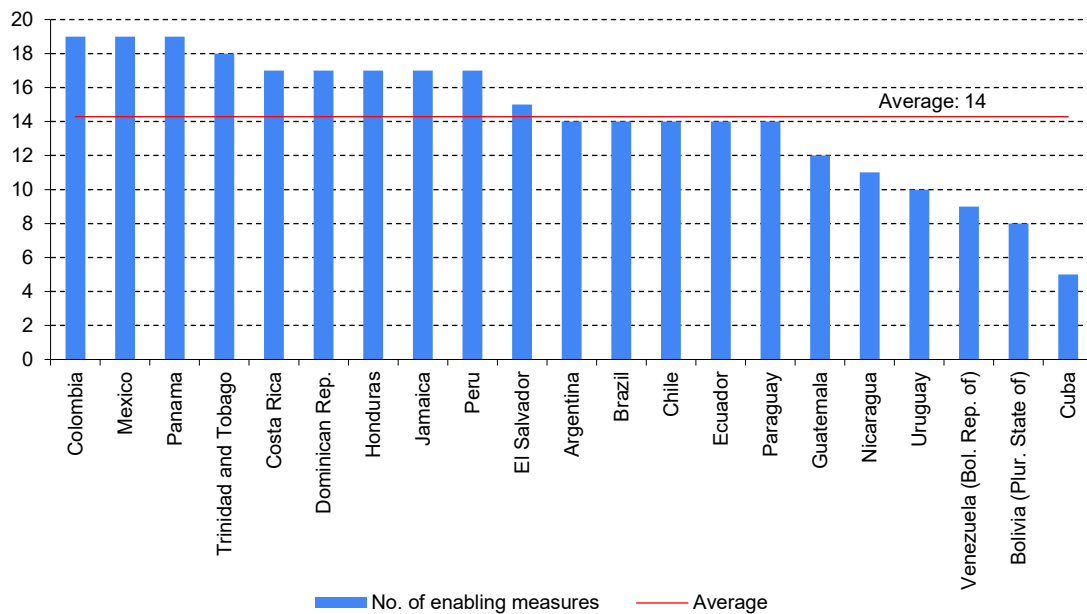
On average, countries in the region implement 28 policies that could restrict digital trade. On the one hand, Jamaica imposes the fewest restrictions, followed by Trinidad and Tobago, Chile and El Salvador. On the other hand, Cuba, Brazil, and Argentina show the highest number of restrictive policies.

Figure 2 shows the ranking related to enabling policies, which is the second database component. The figure reviews the extent to which LAC economies have adopted enabling policies for digital trade. These policies include a wide range of laws and treaties expected to support integration through digital trade, including data protection laws, consumer protection frameworks, and the adoption of the UNCITRAL Model Laws on Electronic Commerce and Electronic Signatures.

On average, countries in LAC have implemented 14 policies that support digital trade. Colombia, Mexico, and Panama have implemented the most enabling measures, while Cuba, Bolivia (P.S. of) and Venezuela (B.R. of) have implemented the fewest enabling policies.

A comparison with figure 1 suggests that countries implementing many restrictions coincide with those implementing fewer enabling policies. Yet, there are some exceptions, such as for Mexico. This country imposes a significant number of restrictions but also has a high number of enabling policies.

Figure 2
Latin America and the Caribbean (selected countries): number of enabling policies by country, 2022



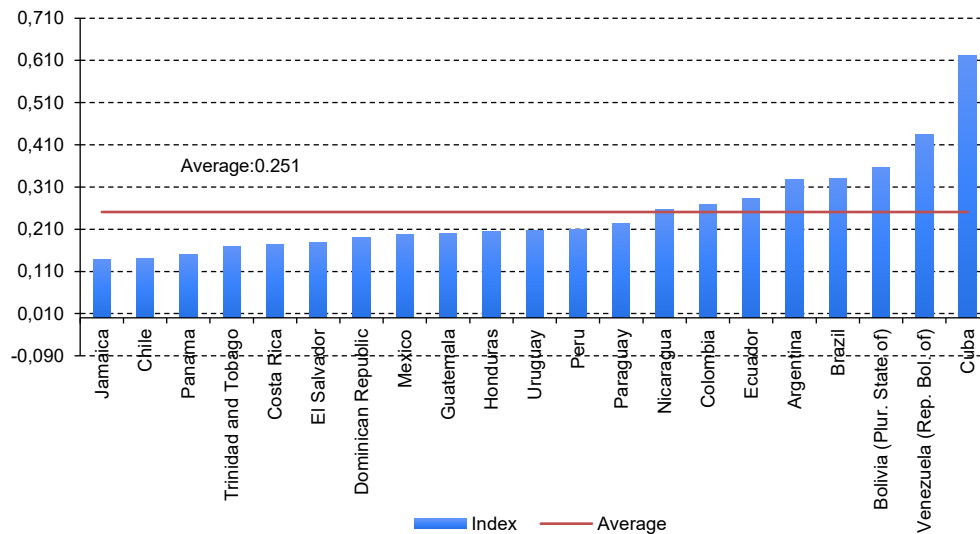
Source: Elaboration by the authors.

Figure 3 shows the ranking of the countries based on the RDTI index. The RDTI aggregates the information about policies listed in the RDTI database restricting and enabling digital trade. The index goes from zero, which refers to a policy environment fully open to digital trade, to one, which refers to a highly restrictive policy environment.

The RDTI summarises the policy environment on digital trade going beyond the mere number of policies and assigning higher importance to policies expected to have a higher impact on digital trade. For example, a higher score would be assigned to a policy imposing a maximum foreign equity share of 20% in a particular sector than a policy setting a maximum foreign equity share of 80%.

The average RDTII for the LAC region for the year 2022 is 0.25. On the one hand, Panama, Jamaica, and Trinidad and Tobago show the region's most open environments for digital trade. On the other hand, Cuba, Venezuela (B.R. of), and Bolivia (P.S. of) show the most restrictive regimes. The picture resembles the one provided by looking merely at the number of restricting and enabling policies but with significant changes for some countries. For example, compared to the ranking based on the number of restrictions, Argentina performs better, meaning that the measures implemented are relatively less restrictive on digital trade compared with other countries imposing a similar number of policies.

Figure 3
Latin America and the Caribbean (selected countries): RDTI index by country, 2022
(Score from 0 –low– to 1 –high– restrictions)



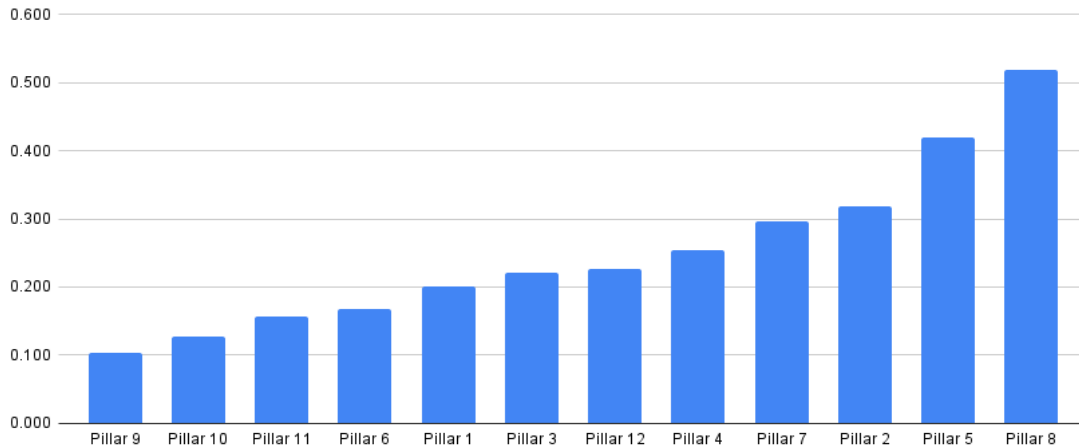
Source: Elaboration by the authors.

The LAC's average RDTII score of 0.25 is below the global average of 0.31, reflecting a policy environment that is relatively more open to digital trade.³ Yet, the region has significant heterogeneity, with scores ranging from 0.14 for Jamaica (the lowest) to 0.62 for Cuba (the highest). Among the countries analyzed, 13 have an RDTII score below the overall LAC average, reflecting that some countries drive the average, particularly Cuba and Venezuela (B.R. of).

The average RDTII by Pillar across the 21 countries illustrates the degree of openness by policy area (figure 4). On the one hand, countries show a relatively open regulatory environment to digital trade regarding policies related to content access (Pillar 9), quantitative trade restrictions (Pillar 10), and standards (Pillar 11). On the other hand, countries show higher scores of the RDTII in intermediary liability (Pillar 8), telecom infrastructure and competition (Pillar 5), and public procurement (Pillar 2).

³ Calculations by the European University Institute (EUI) covering 110 countries, including 21 Latin American and Caribbean countries. See <https://dti.eui.eu/>. The data is still in beta version and not publicly available.

Figure 4
Latin America and the Caribbean (21 countries): average RDTI index by Pillar, 2022
(Score from 0 –low– to 1 –high– restrictions)



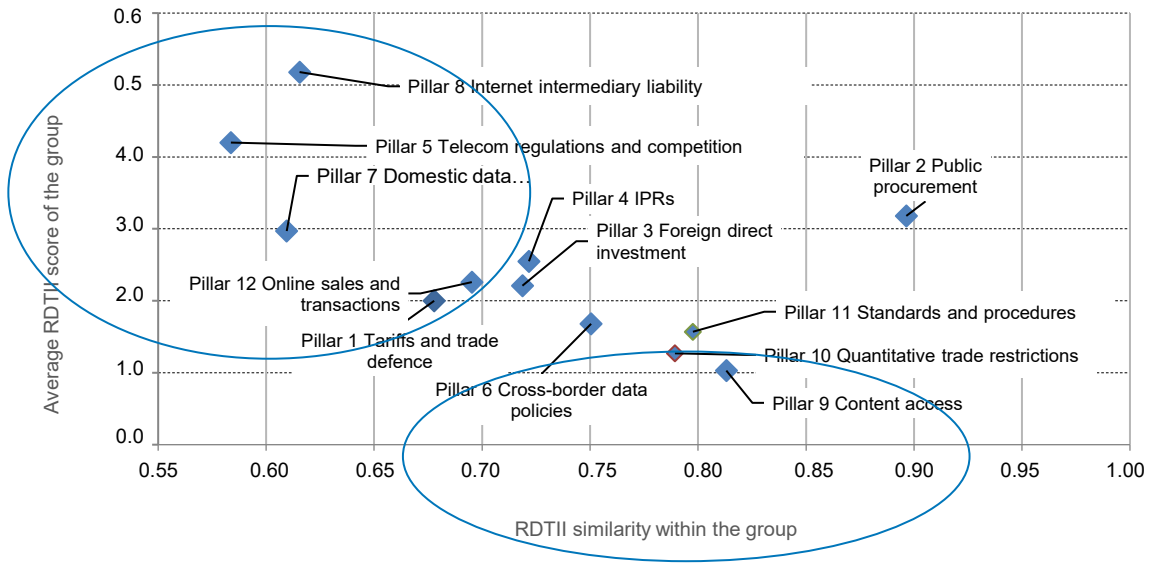
Source: Elaboration by the authors. The Pillars are: Pillar 1: Tariffs and trade defence measures applied on ICT goods; Pillar 2: Public procurement of ICT goods and online services; Pillar 3: Foreign direct Investment in sectors relevant for digital trade; Pillar 4: Intellectual Property Rights (IPRs); Pillar 5: Telecom infrastructure and competition; Pillar 6: Cross-border data policies; Pillar 7: Domestic data policies; Pillar 8: Intermediary liability; Pillar 9: Content access; Pillar 10: Quantitative trade restrictions for ICT goods and online services; Pillar 11: Technical standards applied to ICT goods and online services; Pillar 12: Online sales and transactions.

For this purpose, figure 5 compares average RDTII scores by Pillar (plotted on the vertical axis) and the level of policy similarity among LAC countries for each Pillar (plotted on the horizontal axis). Policy similarity within the group is calculated as the average of bilateral differences of each indicator score within each Pillar. Higher scores indicate higher similarity across countries within a Pillar, while lower scores indicate higher disparity across countries. These indices do not necessarily reflect similarity of regulations but rather similarity in the level of restrictiveness as covered by the RDTI index.

Pillars with higher average RDTII scores also have the largest heterogeneity among the 21 countries (see top left of figure 5). With the exception of public procurement (Pillar 2) that shows high similarity across countries despite the relatively high levels of restrictions, the Pillars with the highest heterogeneity across countries show high RDTII scores. These cover domestic regulations (Pillar 5 on telecom regulations and competition) and data governance measures (Pillar 7 on domestic data protection and privacy, and Pillar 8 on Internet intermediary liability). The score of these Pillars exceeds the region's RDTII average score of 0.25. Harmonisation efforts are important in these Pillars, as these are both show high restrictions and high heterogeneity in their regulations. Other Pillars with strong heterogeneity include Pillar 1 (tariffs) and Pillar 12 (online sales and transactions).

In contrast, some policy areas have fewer restrictions and higher levels of regulatory similarity (see bottom right of figure 5). These include Pillar 9 (content access), Pillar 10 (quantitative trade restrictions) and Pillar 11 (standards). These Pillars are low-hanging fruits for potential regional collaboration to promote regulatory harmonisation, given the relatively similar regulatory framework and fewer restrictions across countries.

Figure 5
Latin America and the Caribbean (selected countries): RDTI index and regulatory similarity by Pillar, 2022



Source: Elaboration by the authors.

III. Main findings by Pillar

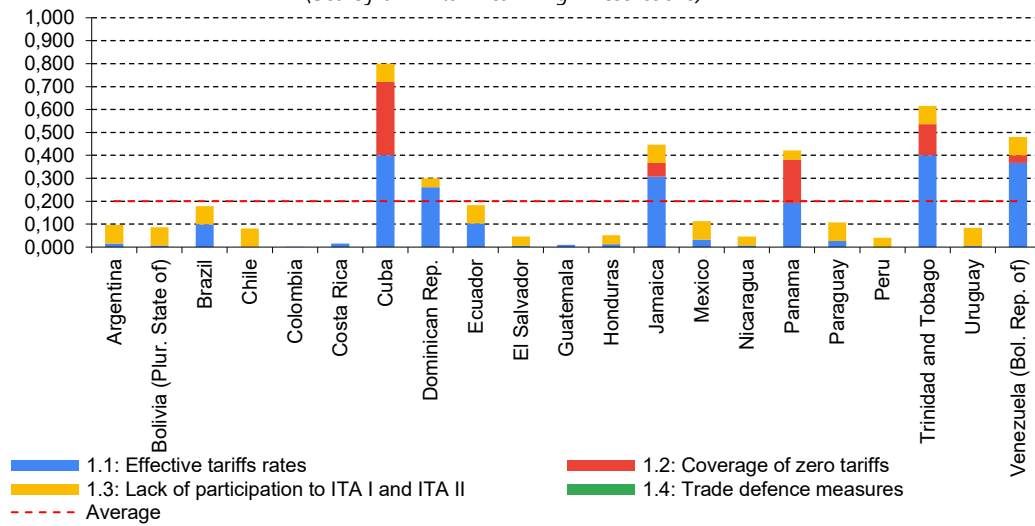
A closer examination of the RDTII and its indicators' scores provides a comprehensive picture of the policy environment in the region.

Pillar 1 focuses on tariffs and trade defence measures imposed on ICT goods imported from other countries in the region. The average score for the region for the year 2022 is 0.20 (figure 6). Only Cuba and Trinidad and Tobago have a score above 0.50. Colombia, Costa Rica, and Guatemala apply almost no restrictions on imports of ICT goods from other countries in the region. These are also the only countries that joined the WTO Information Technology Agreement (ITA I) and its 2015 expansion (ITA II). Under the ITA I, participants eliminated and bound customs duties to zero on a most-favored nation (MFN) basis for a list of specified ICT goods, whilst under the ITA II, countries expanded the product coverage.

None of the countries impose trade defence measures on ICT goods imported from other countries in the region. Nevertheless, three countries, namely Argentina, Brazil, and Mexico, impose trade defence measures on certain ICT goods imported from countries outside the region.

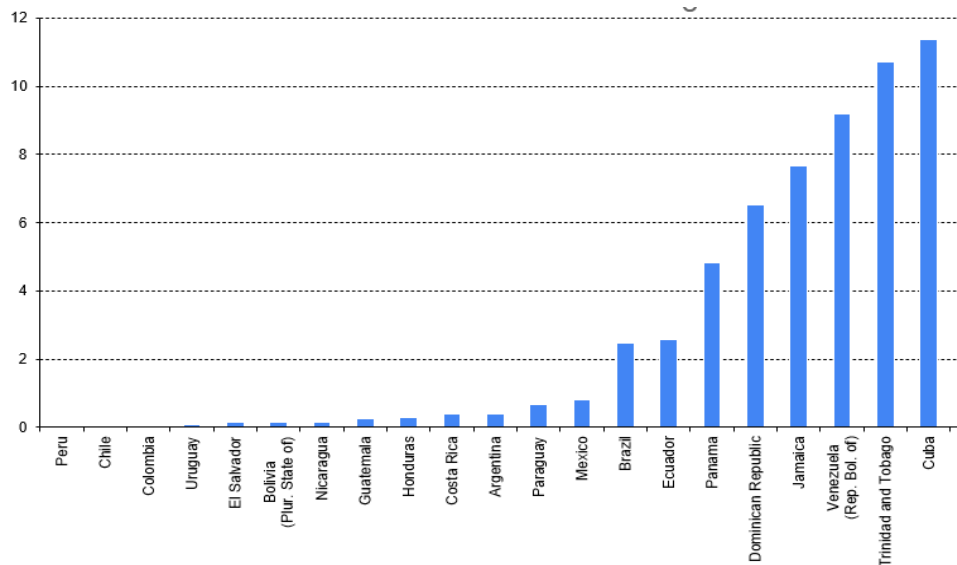
Figure 7 shows the weighted average of the tariffs applied by each country on ICT goods imported from the other countries in the LAC region that are included in the study. These tariffs are included in indicator 1.1 of the methodology. Over half of the countries apply tariffs on ICT goods below 1% on average. Cuba and Trinidad and Tobago are the only countries that impose tariffs on ICT goods which are, on average, above 10%.

Figure 6
Latin America and the Caribbean (selected countries): RDTI index in Pillar 1 (tariffs and trade defence), 2022
(Score from 0 –low– to 1 –high– restrictions)



Source: Elaboration by the authors.

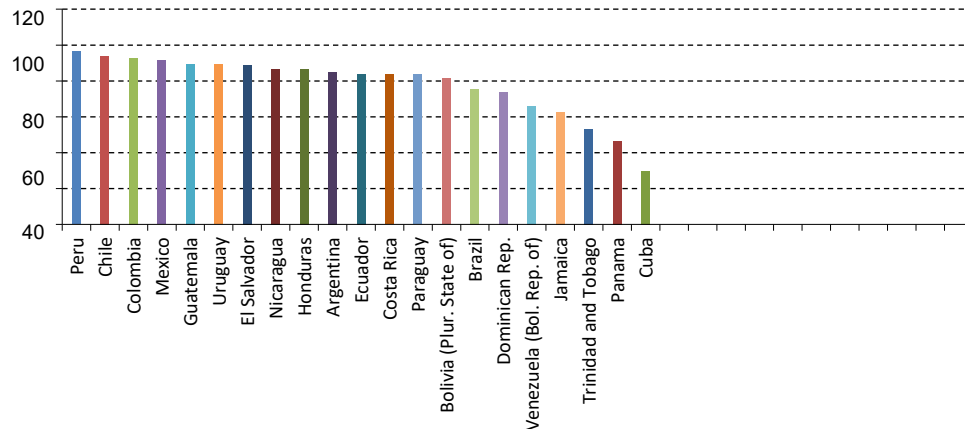
Figure 7
Latin America and the Caribbean (selected countries): tariffs applied on ICT goods imported from the LAC region (weighted average), 2022
(Percentage)



Source: Author’s calculations based on TRAINS tariffs data.

The second indicator shows the coverage rate of zero-tariffs applied by each country to ICT goods imports from the other countries included in the study, see figure 8. On the one hand, the four countries of the Pacific Alliance (Chile, Colombia, Mexico, and Peru) apply zero tariffs to over 90% of ICT goods imported from the region. On the other hand, Cuba and Panama are the only countries applying zero tariffs to less than 50% of their imported ICT goods from the rest of the countries included in the study.

Figure 8
Latin America and the Caribbean (selected countries): share of duty-free imports of ICT goods from the LAC region, 2022
(Percentage)



Source: Author's calculations based on TRAINS tariffs data.

Pillar 2 considers public procurement involving ICT goods and online services. The regional average for this Pillar is 0.32 (see figure 9). There are fewer restrictions under this Pillar, as only one country, namely Bolivia (P.S. of) has a score above 0.5. Five countries (Bolivia, P.S. of, Brazil, Dominican Republic, Panama, and Venezuela, B.R. of) impose measures that exclude foreign firms from participating in public tenders under certain circumstances. Moreover, all countries, except Cuba, apply certain provisions that may restrict competition in public tenders, such as preference margins for local companies.

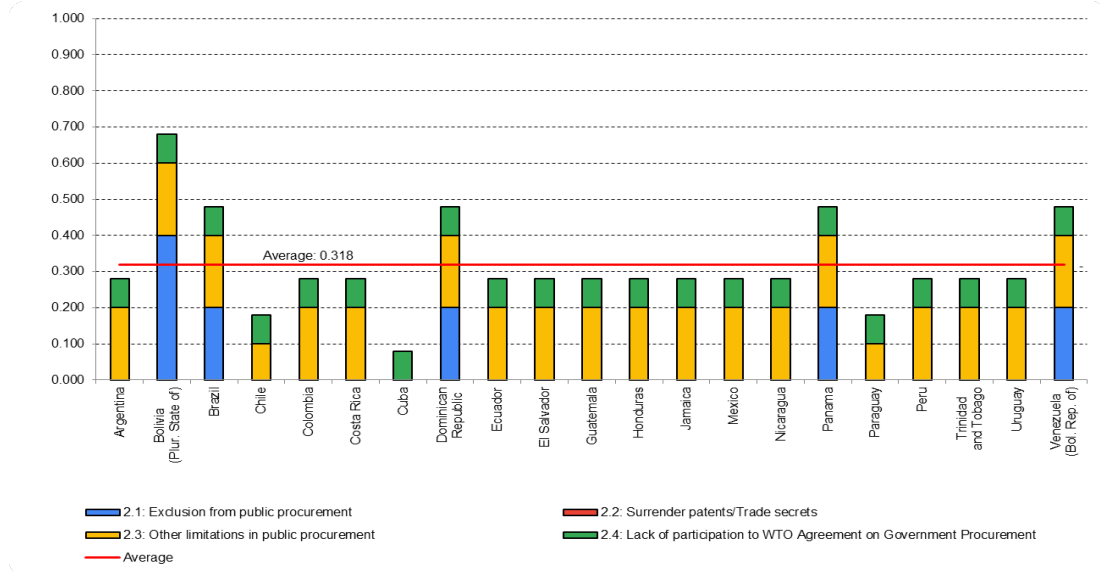
None of the countries implement restrictions related to source code, encryption, and trade secrets, including the requirement to surrender source code or to use specific encryption or other national standards to participate in public tenders. At the same time, none of the countries joined the WTO Government Procurement Agreement (GPA), which regulates the procurement of goods and services by the public sector based on the principles of openness, transparency, and non-discrimination.

Pillar 3 considers foreign direct investment (FDI) regulations in digital trade-related sectors. The average RDTI score for this Pillar is 0.22 (see figure 10). On the one hand, six countries show a fully open environment for FDI: Chile, El Salvador, Guatemala, Jamaica, Panama, and Uruguay. On the other hand, two countries have scores exceeding 0.50: Bolivia (P.S. of), and Ecuador.

Majority ownership by foreigners is not allowed in specific sectors in Argentina, Bolivia (P.S. of), Brazil, Cuba, Ecuador, Nicaragua, and Peru. Moreover, FDI restrictions in certain state-owned enterprises are applied in Costa Rica, Paraguay, and Venezuela (B.R. of). The restricted sectors include the telecom sector, newspapers, media, social media, and postal sector.⁴ The only country imposing a joint venture requirement is Bolivia (P.S. of), while nationality or residency requirements are applied in Argentina, Brazil, Colombia, Costa Rica, Cuba, and the Dominican Republic.

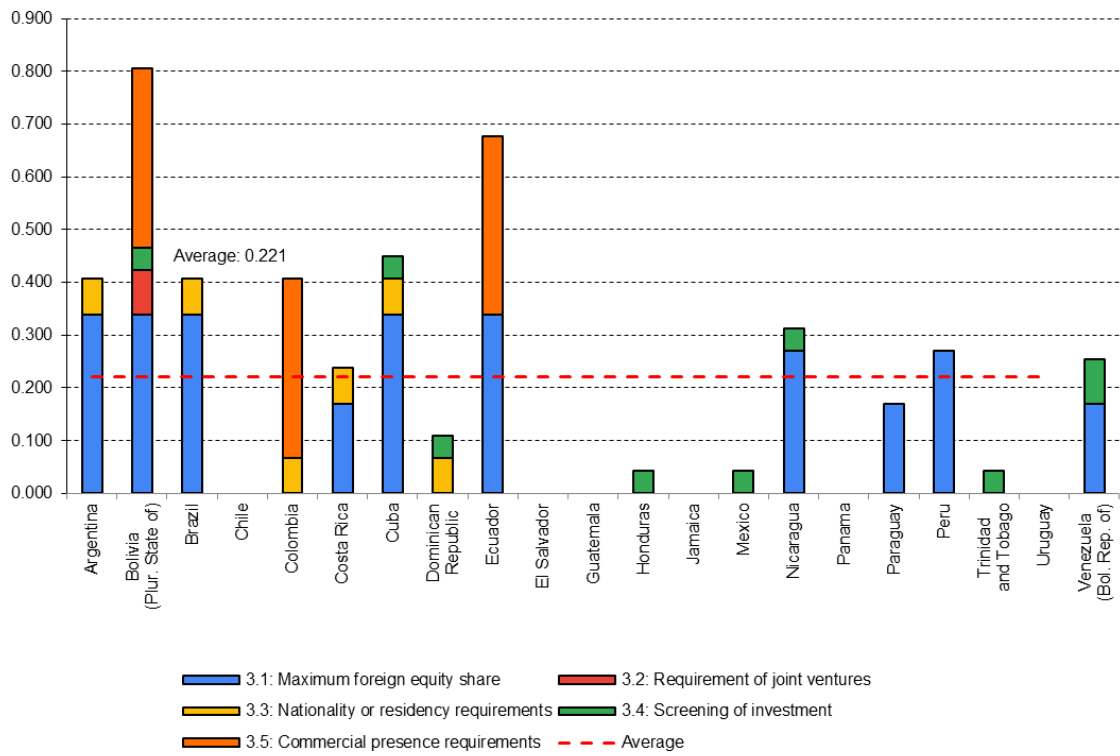
⁴ Restrictions applied to the broadcasting sector have been included in the analysis when it was not clear whether they also applied online.

Figure 9
Latin America and the Caribbean (selected countries): RDTI index in Pillar 2 (public procurement), 2022
(Score from 0 –low– to 1 –high– restrictions)



Source: Elaboration by the authors.

Figure 10
Latin America and the Caribbean (selected countries): RDTI index in Pillar 3 (foreign direct investment), 2022
(Score from 0 –low– to 1 –high– restrictions)



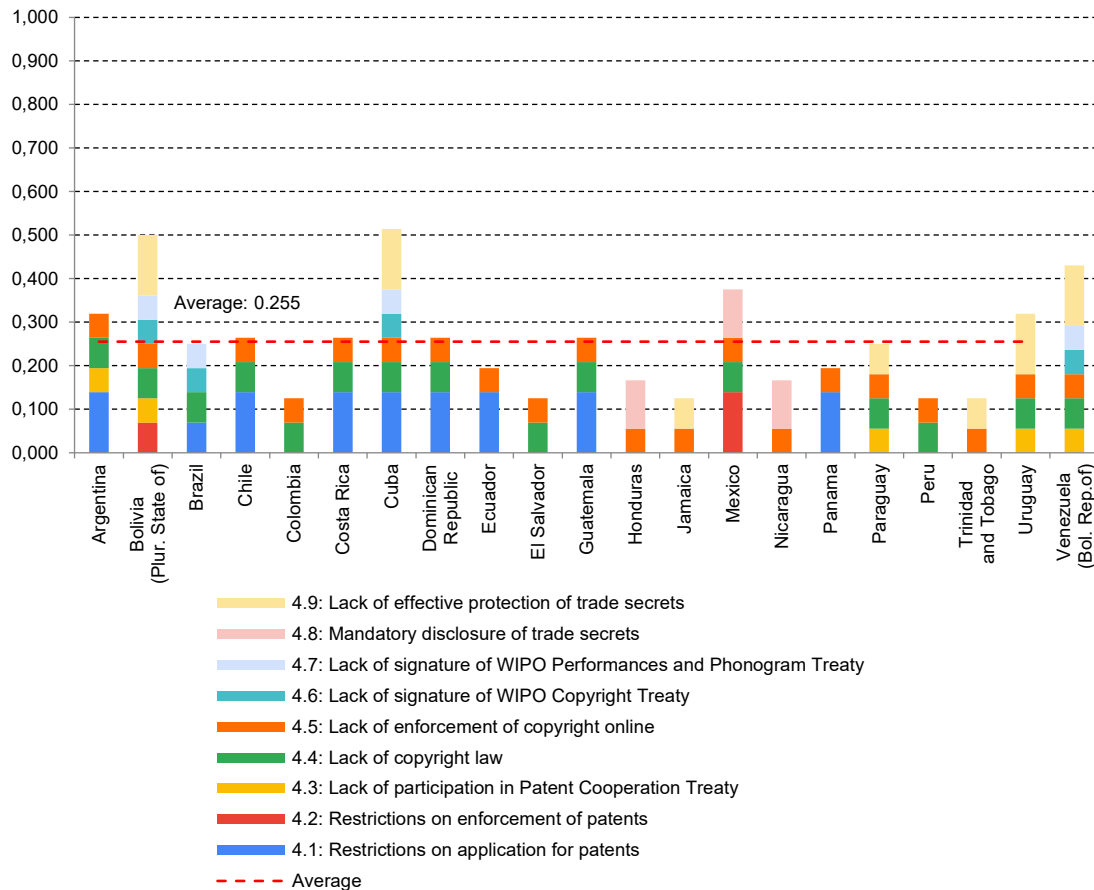
Source: Elaboration by the authors, as of April 2023.

Investment screenings are used in Bolivia (P.S. of), Cuba, Dominican Republic, Honduras, Mexico, Nicaragua, Trinidad and Tobago, and Venezuela (B.R. of). These screening procedures include the need to show the economic benefits of the investment, a screening on whether foreign investments can impair national security, and other restrictions on mergers and acquisitions that go beyond the general restrictions for competition reasons. These measures may create uncertainty around FDI and can imply complex processes that delay investment procedures.

Commercial presence requirements are imposed by Bolivia (P.S. of), Colombia, and Ecuador. These cover mainly companies involved in public procurement. In some cases, these apply horizontally-although it is not clear whether they are enforced in relation to online services. When this requirement applies, companies must establish their own office, branch, or subsidiary in the country to provide their services locally.

Pillar 4 examines Intellectual Property Rights (IPR) regulations. The regional average for the RDTII in this Pillar is 0.25 (see figure 11). Most Latin American countries have signed the Patent Cooperation Treaty (PCT), the WIPO Copyright Treaty (WCT), and the WIPO Performances and Phonogram Treaty (WPPT). The two WIPO agreements are referred to as “Internet Treaties”. Five countries —Argentina, Bolivia (P.S. of), Paraguay, Uruguay, and Venezuela (B.R. of)— have not joined the PCT. This is an international patent law treaty that provides a unified procedure for filing patent applications to protect inventions in each of its contracting states.

Figure 11
Latin America and the Caribbean (selected countries): RDTI index in Pillar 4 (intellectual property rights), 2022
(Score from 0 –low– to 1 –high– restrictions)



Source: Elaboration by the authors.

Four countries have not joined the two WIPO “Internet Treaties”: Bolivia (P.S. of), Brazil, Cuba, and Venezuela (B.R. of). First, the WCT is a special agreement under the Berne Convention, which deals with the protection of works and the rights of their authors in the digital environment. Beyond the rights recognized by the Berne Convention, authors are granted certain additional economic rights. The Treaty deals with two subject matters to be protected by copyright: (i) computer programs, whatever the mode or form of their expression; and (ii) compilations of data or other material (“databases”). Second, the WPPT deals with the rights of two kinds of beneficiaries, particularly in the digital environment: (i) performers (actors, singers, musicians, etc.); and (ii) producers of phonograms (persons or legal entities that take the initiative and have the responsibility for the fixation of sounds).

Domestic restrictions on the application for and enforcement of patents are imposed by 11 countries. All countries have implemented copyright laws, with certain exceptions for using copyrighted works. Yet, only six (Ecuador, Honduras, Jamaica, Nicaragua, Panama, and Trinidad and Tobago) apply fair use or fair dealing models to copyright exceptions, which are expected to provide more flexibility and space for innovation.

Reports of inadequate online copyright enforcement and high piracy rates are found in almost all countries except Brazil. Seven countries do not offer a comprehensive regulatory framework for protecting trade secrets, while three countries (Honduras, Mexico, and Nicaragua) show some restrictions regarding the forced disclosure of trade secrets.

Pillar 5 reviews infrastructure and competition regulations in the telecommunication sector. The regional average in this Pillar is 0.42 (see figure 12), reflecting significant restrictions in this area. Cuba has the highest score (0.85), followed by Bolivia (P.S. of), Ecuador, Nicaragua, Paraguay, Uruguay, and Venezuela (B.R. of) with scores above 0.5.

Most countries do not restrict foreign investment in the telecom sector, except for seven economies that impose certain restrictions on foreign ownership in the entire sector or for state-owned enterprises operating in the telecom sector. These countries are Bolivia (P.S. of), Costa Rica, Cuba, Ecuador, Nicaragua, Paraguay, and Venezuela (B.R. of). In addition, the Government owns shares in telecom companies in 13 countries.

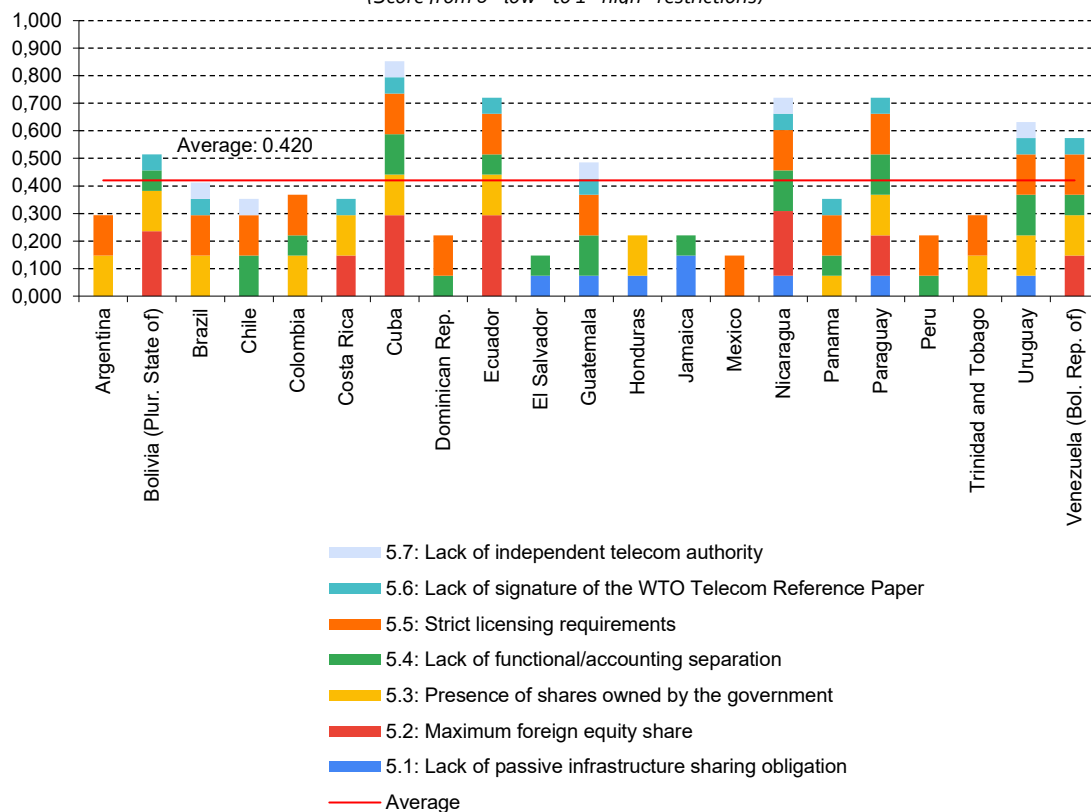
Passive infrastructure sharing is practiced or mandated in all the countries apart from Jamaica. This refers to a process through which the passive elements of network infrastructure are shared with other operators. This is considered good practice in the market as it can lower the cost of network deployment (especially in rural areas or marginal markets), stimulate migration to new technologies and the deployment of mobile broadband, and enhance competition between mobile operators and service providers when safeguards are used to prevent anti-competitive behavior.

Only six countries (i.e., Argentina, Brazil, Costa Rica, Honduras, Mexico, and Trinidad and Tobago) implement functional and accounting separation for operators with significant market power (SMP). This is considered a good practice to enhance cost transparency, promote fair market prices, and avoid SMP and non-discriminatory practices in telecom markets. Among the 15 remaining countries, nine countries implement only accounting separation for operators with significant market power, while six countries (Chile, Cuba, Guatemala, Nicaragua, Paraguay, and Uruguay) do not implement either functional or accounting separation.

All 21 countries have a telecom sector regulator. However, it is reported that this authority is not fully independent from the government in its decision-making process in six countries (Brazil, Chile, Cuba, Guatemala, Nicaragua, and Uruguay). Licensing requirements in the telecom sector show some restrictions in 16 countries, requiring commercial presence of the telecom companies, minimum capital requirements or non-transparent processes.

Eleven countries have not appended the Telecom Reference Paper to their schedule of commitments under the WTO General Agreement on Trade in Services (GATS). The Telecom Reference Paper is a set of regulatory principles on competitive safeguards, interconnection, universal services obligation, public availability of licensing criteria, independent regulators, and allocation and use of scarce resources.

Figure 12
Latin America and the Caribbean (selected countries): RDTI index in Pillar 5
(telecom infrastructure and competition), 2022
(Score from 0 –low– to 1 –high– restrictions)



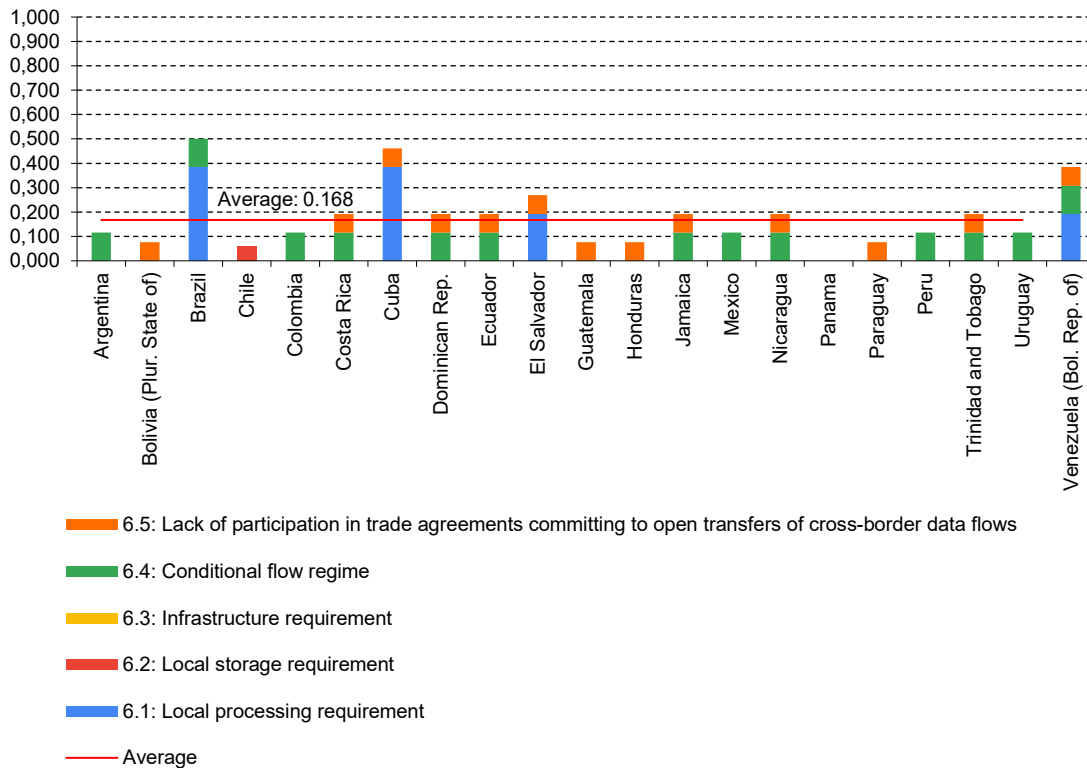
Source: Elaboration by the authors.

Pillar 6 measures requirements for cross-border data transfers. The average RDTI index for the region is 0.17, reflecting a relatively open regulatory framework in this area (see figure 13). Panama is the only country in the region with a fully open regime on cross-border data transfers. Five countries impose certain restrictions on data localization: Brazil, Cuba, Chile, Cuba, El Salvador, and Venezuela (B.R. of). Brazil imposes some restrictions on the location of data processing when procuring cloud computing in the public sector. Cuba requires hosting websites on local servers, while Venezuela (B.R. of) imposes local processing of payment information. In addition, Chile requires keeping a local copy of specific financial data, while El Salvador establishes that “data information agencies”, which are companies in the financial sector dealing with a credit history of consumers, should maintain their database and backup in the country.

Moreover, 13 countries impose conditions on cross-border data transfers, particularly personal data, as part of their data protection laws. These are Argentina, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, Jamaica, Mexico, Nicaragua, Peru, Trinidad and Tobago, Uruguay, and Venezuela (B.R. of).

Finally, only eight countries –Argentina, Brazil, Chile, Colombia, Mexico, Panama, Peru, and Uruguay– have joined free trade agreements (FTAs) requiring open cross-border data flows.

Figure 13
Latin America and the Caribbean (selected countries): RDTI index in Pillar 6 (cross-border data policies), 2022
(Score from 0 –low– to 1 –high– restrictions)



Source: Elaboration by the authors.

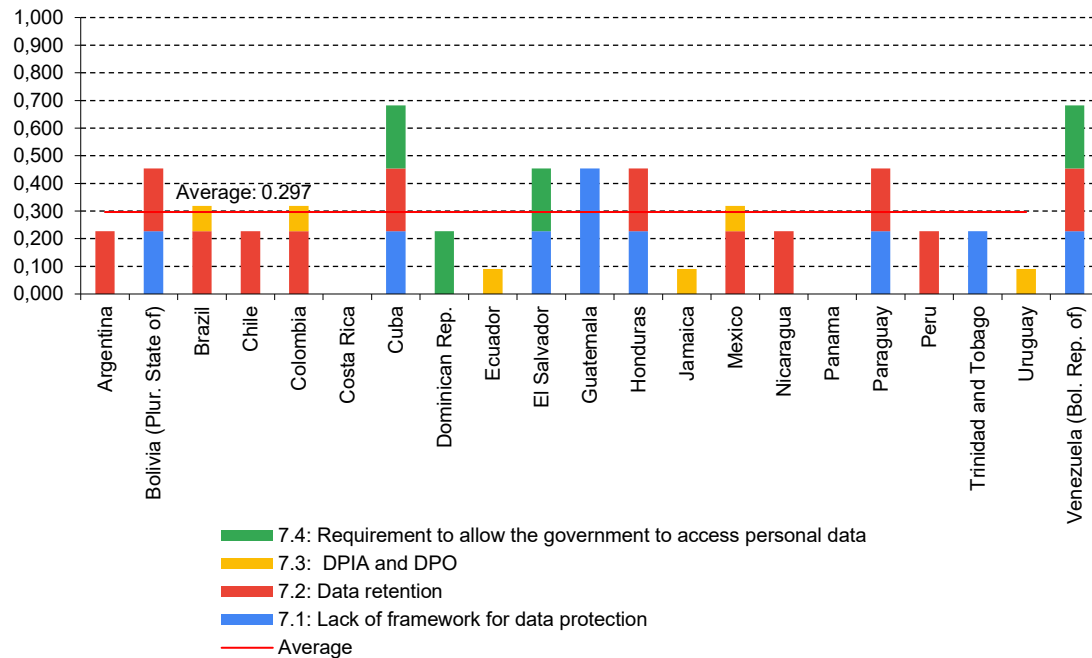
Pillar 7 refers to policies for the domestic use and processing of data. The regional average RDTI index is 0.30 for this Pillar (figure 14). Cuba and Venezuela (B.R. of) have the highest score (0.68), while Costa Rica and Panama have a fully open regulatory environment.

Thirteen countries have a comprehensive data protection framework, which is considered an important enabler of digital trade as it promotes trust for users. These are Argentina, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Jamaica, Mexico, Nicaragua, Panama, Peru, and Uruguay. Seven other countries do not have a comprehensive regime but provide a sectoral data protection framework. Only Guatemala lacks any regulation related to the protection of personal data, although the country has a Bill pending approval by its Congress.

Six countries require firms processing personal data to appoint a data protection officer (DPO) or to perform a data protection impact assessment (DPIA), which creates a cost for companies. These are Brazil, Colombia, Ecuador, Jamaica, Mexico, and Uruguay. In addition, more than half of the countries implement a minimum data retention period for certain data, mainly in the telecom sector. When these requirements apply, the companies must keep a copy of certain data and make it available at their premises upon request. These measures also generate costs and may raise affect freedom of expression.

Finally, Cuba, Dominican Republic, El Salvador, and Venezuela (B.R. of) are the only countries with laws allowing their government to access personal data without a court order. This can cause users to distrust digital services as the government authorities do not need a court decision or a warrant to access users' personal data. In the Dominican Republic and El Salvador, these requirements are limited to the financial sector. In Cuba and Venezuela (B.R. of), however, this requirement is broader.

Figure 14
Latin America and the Caribbean (selected countries): RDTI index in Pillar 7 (domestic data policies), 2022
(Score from 0 –low– to 1 –high– restrictions)



Source: Elaboration by the authors.

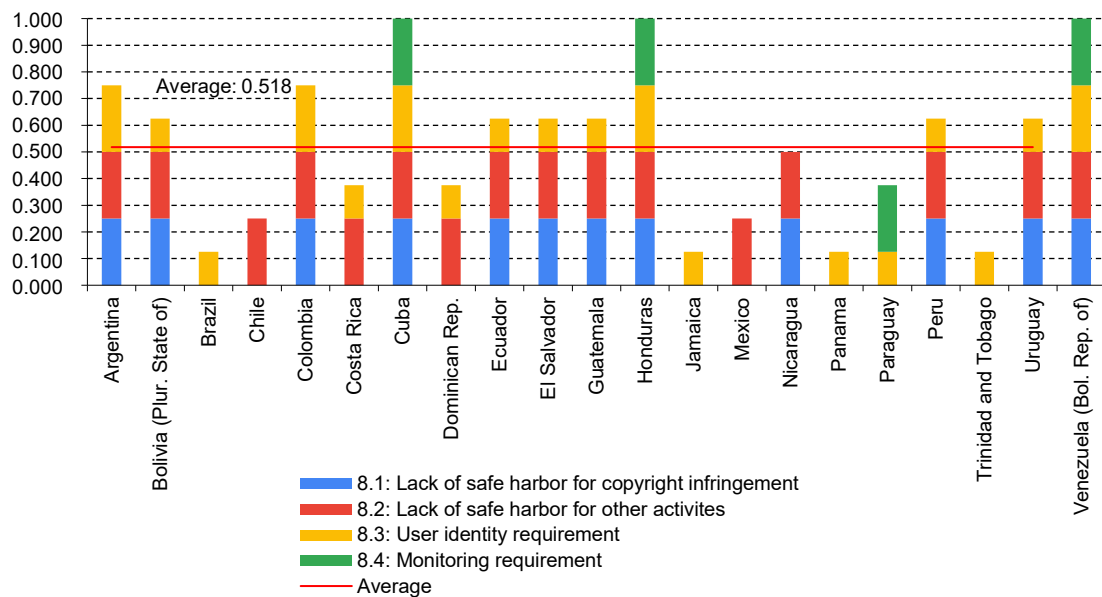
Pillar 8 focuses on internet intermediaries' regulation. These are companies that intermediate between content producers and the internet, facilitating its use. Examples are Internet Service Providers (ISPs), search engines, and social media platforms. With a regional average of 0.52, this is the Pillar with the highest average score (figure 15). Brazil, Jamaica, Panama, and Trinidad and Tobago have the lowest score of 0.12, whereas Cuba, Honduras, and Venezuela (B.R. of) show a highly restrictive environment with a score of 1.

The first two indicators under this Pillar relate to the presence of a safe harbour to protect intermediaries from liability for user-generated content. A safe harbor is considered a strategic factor supporting the emergence of innovative services as it provides intermediaries with sufficient legal certainty to conduct a wide range of activities, free from the threat of potential liability and the chilling effect of potential litigation. A safe harbor grants internet intermediaries broad or conditional immunity for third-party content, provided that certain conditions are respected. Safe harbor provisions for intermediaries often follow a separate regime for copyright infringement compared to other forms of illegal content.

Only five countries (Brazil, Jamaica, Panama, Paraguay, and Trinidad and Tobago) provide a safe harbor for intermediaries that covers both copyright infringement and other user activities. In addition, Chile, Costa Rica, Dominican Republic, and Mexico limit safe harbour to copyright infringement. The other countries have not implemented any regime to limit the liability of intermediaries.

All countries except for Chile, Mexico and Nicaragua, apply user identity requirements to purchase a SIM card or access the Internet. Moreover, four countries—Cuba, Honduras, Paraguay, and Venezuela (B.R. of)— apply monitoring requirements for intermediaries. This requirement obliges intermediaries to monitor users' activities and remove or block content deemed illegal or harmful, from political content to non-commercial content and IP-based violations. As a result, internet intermediaries are forced to police certain aspects of the internet on behalf of the government.

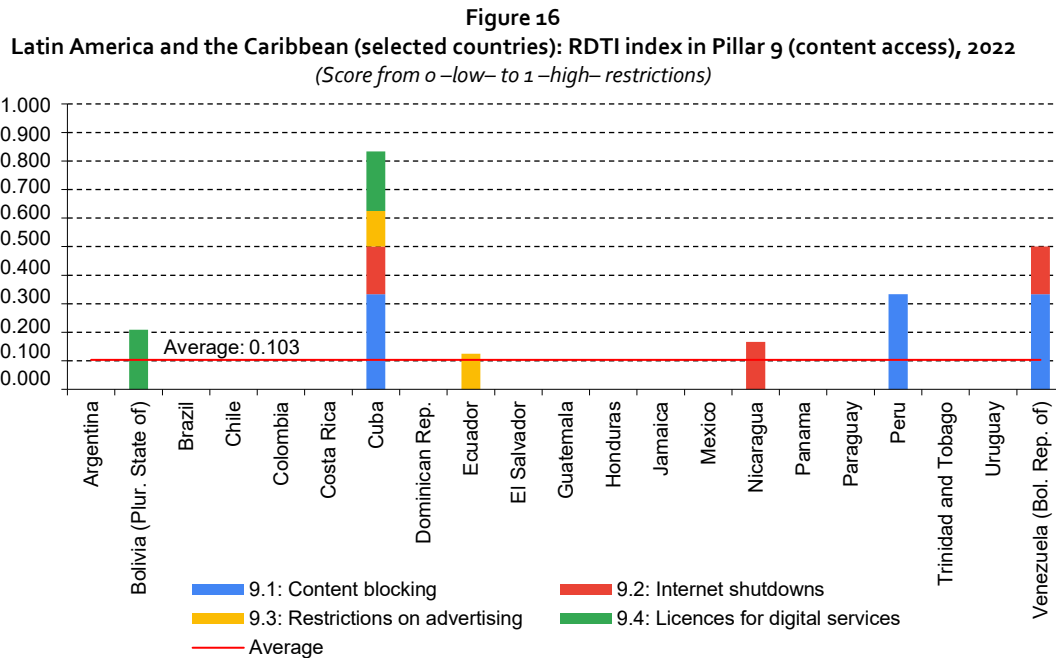
Figure 15
Latin America and the Caribbean (selected countries): RDTI index in Pillar 8 (intermediary liability), 2022
(Score from 0–low– to 1–high– restrictions)



Source: Elaboration by the authors, as of April 2023.

Pillar 9 examines content access regulations. The regional average for this Pillar (0.10), which is the lowest score among all Pillars (figure 16). This reflects an open environment to access commercial web content in the region. More than half of the countries do not impose any restrictions on web content access. The countries that are fully open are Argentina, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Panama, Paraguay, Trinidad and Tobago, and Uruguay.

Blocking of commercial web content has been reported in Cuba, Peru, and Venezuela (B.R. of), Ecuador, and Peru. Internet shutdowns have occurred, although rarely, in Cuba, Nicaragua, and Venezuela (B.R. of). Internet shutdowns have a large impact on both businesses and consumers. Cuba is the only country restricting online advertising. Finally, getting a license to provide certain online services is mandatory only in Cuba and Bolivia (P.S. of).



Source: Elaboration by the authors.

Pillar 10 focuses on quantitative trade restrictions applied to ICT goods or online services. The average score for this Pillar is 0.13, reflecting an open environment for ICT goods with few quantitative trade restrictions across the region. Twelve countries have a fully open environment: Bolivia (P.S. of), Chile, Costa Rica, Dominican Republic, Ecuador, Guatemala, Honduras, Jamaica, Panama, Peru, Trinidad and Tobago, and Uruguay. Only Argentina, Brazil, and Colombia register RDTI scores above 0.50 (figure 17).

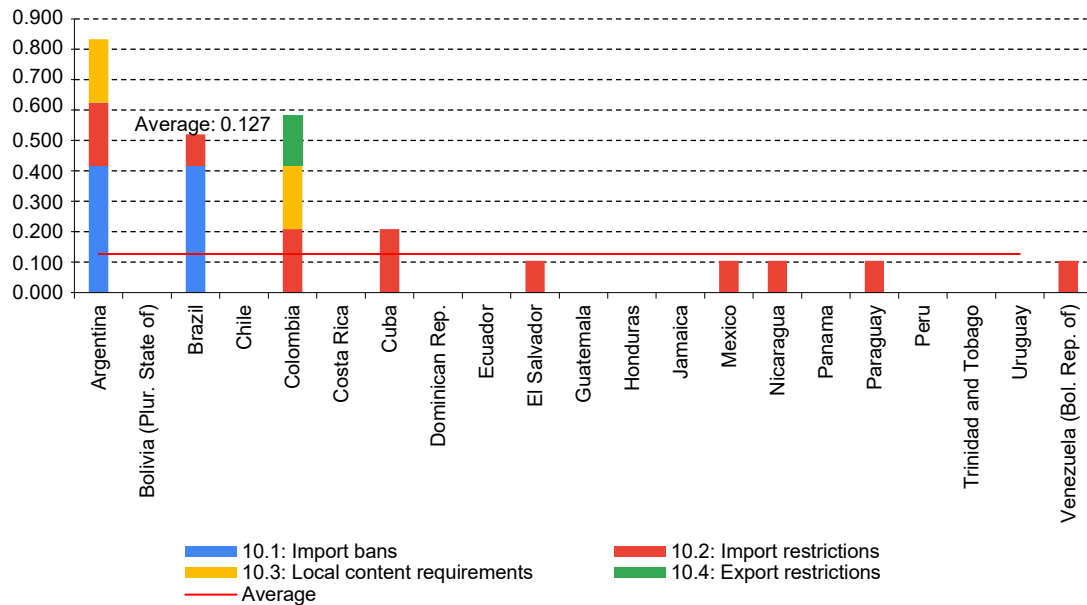
Argentina and Brazil are the only countries imposing import bans on certain ICT goods, while only Argentina and Colombia impose local content requirements. The latter requires firms to use domestically manufactured goods or domestically supplied services in order to operate in an economy. Colombia is also the only country imposing export restrictions on certain ICT goods. Moreover, other restrictions on imports are found in nine countries. These restrictions range from licenses for imports of certain ICT goods and telecom equipment to a lack of transparency regarding import procedures.

Pillar 11 focuses on non-tariff measures (NTMs) related to standards and procedures that affect trade in ICT goods and online services. The LAC's average score for this Pillar is 0.16, which is below that of most other Pillars (figure 18). Five economies (Dominican Republic, El Salvador, Guatemala, and Trinidad and Tobago) show a fully open environment and standards generally in line with international best practices. In contrast, Cuba and Brazil's scores are above 0.50.

All countries allow foreign companies to participate in standard-setting bodies except for Cuba and Venezuela (B.R. of). For the certification of electrical products, six countries accept the self-certification of products by suppliers through the Supplier Declaration of Conformity (SDoC) without the need for additional certification in the country. Most other countries accept third-party certification from Conformity Assessment Bodies (CABs). In these cases, while companies need to submit their equipment for testing to the regulator or its delegated entity, third-party certification CABs recognized (or approved) by the regulator are accepted. This is usually the case when the country has signed a Mutual Recognition Agreement (MRA) with other countries. In such cases, members of an MRA recognize each other's test reports and certificates, exempting companies from the certification procedure.

Only Brazil and Mexico impose additional screening of certain ICT products. Finally, the encryption standards applied by countries in the region are aligned with internationally recognized encryption standards. Only Cuba imposes restrictions on the use of encryption.

Figure 17
Latin America and the Caribbean (selected countries): RDTI index in Pillar 10 (quantitative trade restrictions), 2022
(Score from 0 –low– to 1 –high– restrictions)

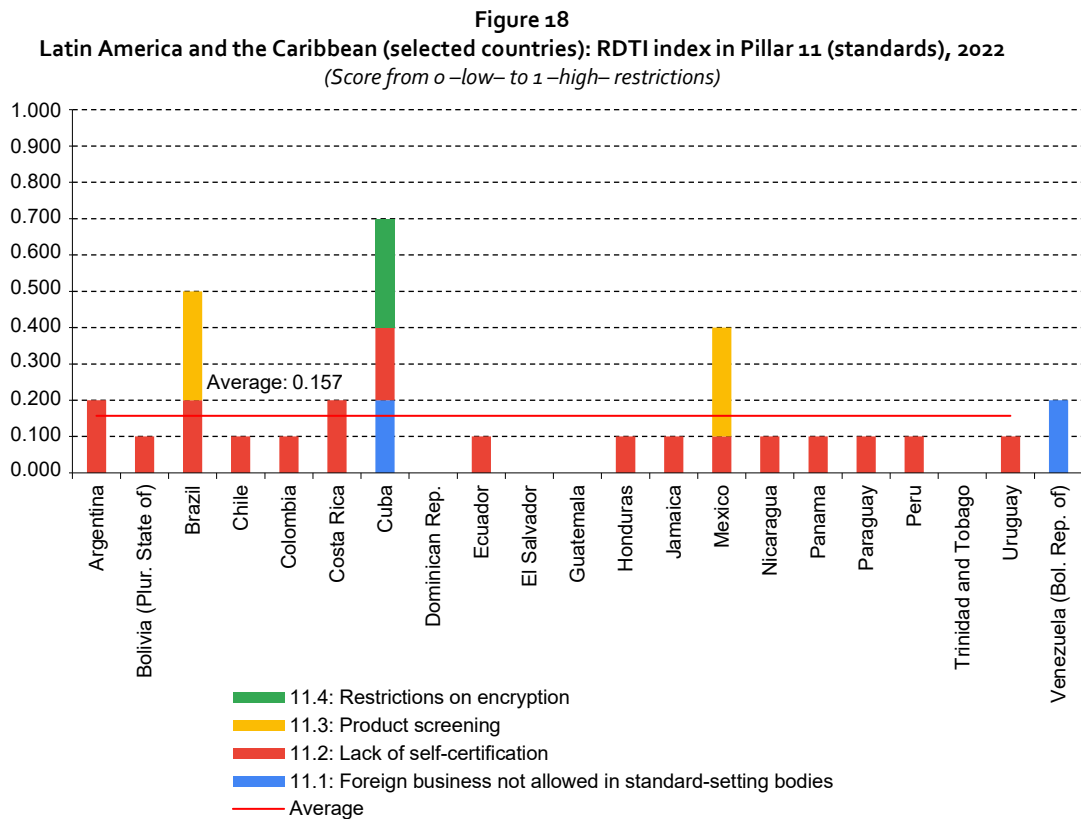


Source: Elaboration by the authors, as of April 2023.

Pillar 11 focuses on non-tariff measures (NTMs) related to standards and procedures that affect trade in ICT goods and online services. The LAC's average score for this Pillar is 0.16, which is below that of most other Pillars (figure 18). Five economies (Dominican Republic, El Salvador, Guatemala, and Trinidad and Tobago) show a fully open environment and standards generally in line with international best practices. In contrast, Cuba and Brazil's scores are above 0.50.

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Only Brazil and Mexico impose additional screening of certain ICT products. Finally, the encryption standards applied by countries in the region are aligned with internationally recognized encryption standards. Only Cuba imposes restrictions on the use of encryption.



Source: Elaboration by the authors.

Pillar 12 examines policies relating to online sales and transactions. The average score for this Pillar is 0.23 (figure 19). Cuba is the only country with a score above 0.5, reflecting its restrictions on foreign participation in the e-commerce sector.

Four countries (Argentina, Brazil, Cuba, and Mexico) impose certain limits on the value or amount of goods that can be purchased online or shipped with express shipments. In addition, Argentina, Brazil, Colombia, Cuba, and the Dominican Republic impose certain limits on online payments, including additional charges for online purchases from abroad and limits on applications that can be used for online payments.

Colombia,⁵ the Dominican Republic, Ecuador,⁶ El Salvador, Peru, and Uruguay are the only countries with a de minimis threshold above 200 USD. This is a threshold recommended in the guidelines of the International Chamber of Commerce (ICC) to support e-commerce transactions.⁷ Below this threshold, customs do not charge customs duties. Eight countries (Costa Rica, Cuba, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay, and Trinidad and Tobago) do not have any de minimis threshold, while the remaining countries hold de minimis thresholds below 200 USD.

⁵ Although Colombia implements a de minimis threshold equal to 200 USD, Law No. 2,155 restricts it to goods from countries with which Colombia has a free trade agreement that addresses a duty and tax de minimis and only if the goods are not for commercial purposes.

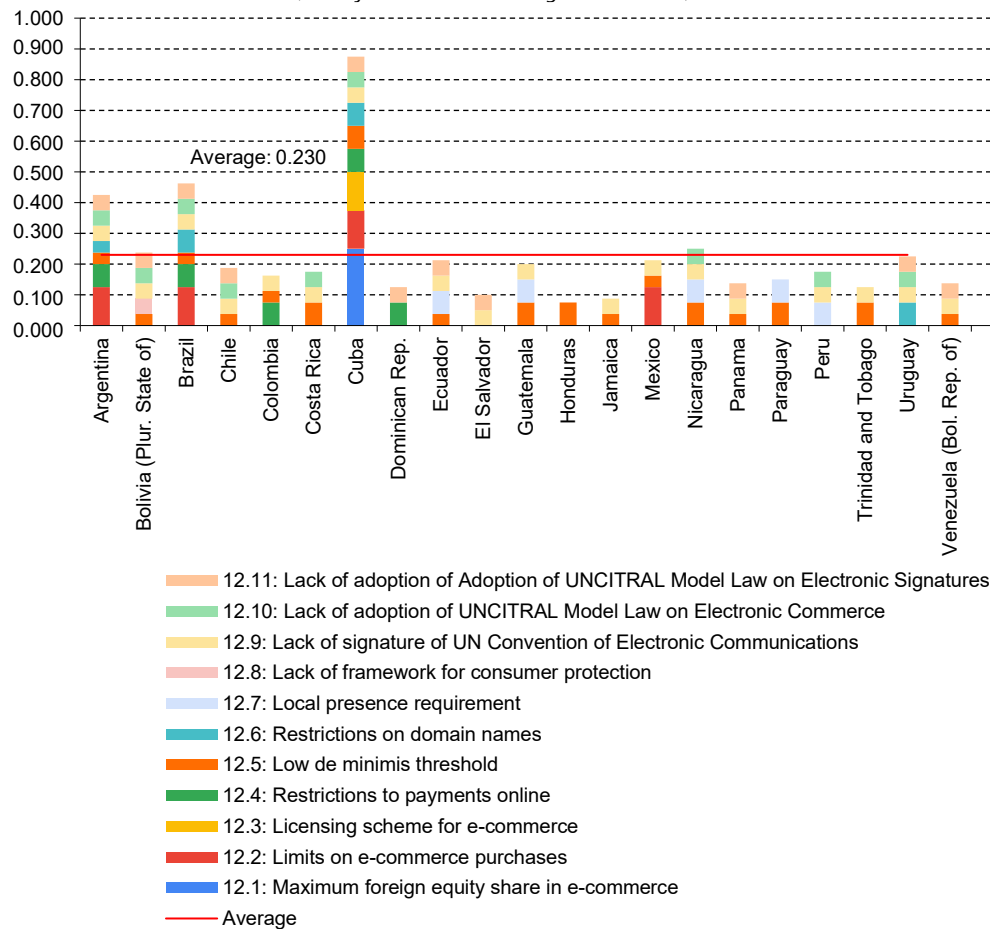
⁶ Although Ecuador's de minimis threshold was increased to 400 USD and 4kg in 2021. However, this applies only to non-commercial postal shipments, while it is reported that express shipments pay 42 USD import tax per shipment - regardless of value.

⁷ For more information, see: <https://iccvbo.org/publication/icc-policy-statement-on-global-baseline-de-minimis-value-thresholds-2015/>.

Four countries (Argentina, Brazil, Cuba, and Uruguay) impose certain restrictions on domain names, including local or commercial presence requirements. Five other countries —Ecuador, Guatemala, Nicaragua, Paraguay, and Peru— impose local presence requirements to offer certain online services. Moreover, Bolivia (P.S. of) is the only country that has not adopted a framework that applies consumer protection to online transactions.

Regarding the participation in international agreements relevant to promote online sales and transactions, the United Nations Convention on Electronic Communications has been joined only by three countries in the region (Dominican Republic, Honduras, and Paraguay), while 12 countries have adopted national legislation based on or influenced by the UNCITRAL Model Law on Electronic Commerce, and ten countries have adopted the UNCITRAL Model Law on Electronic Signatures.

Figure 19
Latin America and the Caribbean (selected countries): RDTI index in Pillar 12 (online sales and transactions), 2022
(Score from 0 –low– to 1 –high– restrictions)



Source: Elaboration by the authors.

IV. Conclusions and recommendations

Latin America and the Caribbean shows a relatively open environment for digital trade integration. However, some countries—including some large economies such as Argentina and Brazil—stand out for having a restrictive environment that impedes integration through digital trade. Colombia, México, and Panama are the countries that implemented the most enabling measures for digital trade, while Cuba, Bolivia (P.S. of), and Venezuela (B.R. of) have implemented only a handful of enabling policies. The countries implementing a high number of restrictions tend to coincide with those implementing fewer enabling policies. Yet, there are some exceptions, such as Mexico, which imposes a significant number of restrictions but also has a high number of enabling policies. When aggregating the policy information of the RDTI database into an index of digital trade integration, Jamaica, Panama, and Chile show the most open regulatory environment for digital trade in the region, while Cuba, Venezuela, and Bolivia (P.S. of) show a high level of regulatory restrictions on digital trade.

The average RDTII by Pillar across the 21 countries illustrates the degree of openness by policy area. On the one hand, countries show a relatively open regulatory environment to digital trade regarding policies related to content access (Pillar 9), quantitative trade restrictions (Pillar 10), and standards (Pillar 11). On the other hand, countries show higher scores of the RDTII in intermediary liability (Pillar 8), telecom infrastructure and competition (Pillar 5), and public procurement (Pillar 2), therefore these represent important priority areas to promote digital trade integration in the region.

Regarding intermediary liability, the countries in the region should consider implementing a safe harbor that protects intermediaries from liability for illegal activities on their platforms. This would reduce legal uncertainty regarding the liability of these internet intermediaries and promote the expansion of innovative services. Regarding the telecom sector, which provides the backbone to conduct digital trade, it is recommended to limit restrictions on foreign ownership and promote competing complying with the WTO Telecom Reference Paper and introducing the functional separation of operators with significant market power. Regarding public procurement, it is recommended to promote a level playing field following the principles of openness, transparency, and

non-discrimination by lifting preferences for local companies and allowing the participation of foreign companies in bidding procedures under equal conditions.

Countries may also improve policies under other Pillars. It is recommended to participate in those international agreements that are expected to be conducive to digital trade, including the WTO Information Technology Agreement (ITA) and its expansion (ITA II), the WIPO Internet Treaties and the UNCITRAL Model Laws on Electronic Commerce and Electronic Signatures. Moreover, the countries in the region should consider adhering to "next generation" FTAs with commitments that support digital trade, including de minimis thresholds and open data transfers across borders. The participation to these agreements can also support regulatory similarity in the region, which can further support digital trade integration. In fact, while removing restrictions and implementing enabling policies can provide an important contribution to digital trade integration, regulatory distances across countries are likely to hinder regional trade integration and matter the most when the regulatory environment is relatively open (Nordås, 2016).

The report shows that Pillars with higher average RDTII scores also have the largest heterogeneity among the 21 countries. With the exception of public procurement (Pillar 2) that shows high similarity across countries despite the relatively high levels of restrictions, the Pillars with the highest heterogeneity across countries show high RDTII scores. These cover domestic regulations (Pillar 5 on telecom regulations and competition) and data governance measures (Pillar 7 on domestic data protection and privacy, and Pillar 8 on Internet intermediary liability). Harmonisation efforts are important in these Pillars, as these are both show high restrictions and high heterogeneity in their regulations. Other Pillars with strong heterogeneity include Pillar 1 (tariffs) and Pillar 12 (online sales and transactions). In contrast, Pillar 9 (content access), Pillar 10 (quantitative trade restrictions) and Pillar 11 (standards) are policy areas have fewer restrictions and higher levels of regulatory similarity. These Pillars are low-hanging fruits for potential regional collaboration to promote regulatory harmonisation, given the relatively similar regulatory framework and fewer restrictions across countries.

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Annex

Summary table of Pillars and indicators

The table summarises the Pillars and indicators listed in the digital trade integration database. The database aims to document measures that affect digital trade integration. The third column of the table shows the expected sign of the impact of each respective policy on digital trade integration: "R" indicates measures that are expected to restrict digital trade integration, while "E" indicates measures that are expected to enable digital trade integration.

Pillar	Indicator	E/R
1	Tariffs and trade defence measures applied on ICT goods	
1.1	Effective tariff rate on ICT goods (applied weighted average)	R
1.2	Coverage rate of zero-tariffs on ICT goods (%)	R
1.3	Participation in the WTO Information Technology Agreement (ITA) and 2015 expansion (ITA II)	E
1.4	Antidumping, countervailing duties and safeguard measures on ICT goods	R
2	Public procurement of ICT goods, products and online services	
2.1	Exclusion from public procurement	R
2.2	Surrender of patents, source code or trade secrets to win public tenders /Restrictions on technology standards for public tenders	R
2.3	Other limitations on foreign participation in public procurement	R
2.4	Signatory of the WTO Agreement on Government Procurement (GPA) with coverage of the most relevant services sectors (CPC752, 754, 84)	E
3	Foreign Direct Investment (FDI) in sectors relevant to digital trade	
3.1	Maximum foreign equity share	R
3.2	Requirement to engage in joint ventures to invest or operate	R
3.3	Nationality/residency requirement for directors or managers	R
3.4	Screening of investment and acquisitions	R
3.5	Commercial presence requirement for digital services providers	R
4	Intellectual Property Rights (IPRs)	
4.1	Practical or legal restrictions related to the application process for patents	R
4.2	Practical or legal restrictions related to the enforcement of patents	R
4.3	Participation in the Patent Cooperation Treaty	E
4.4	Copyright law with clear exceptions	E
4.5	Enforcement of copyright online	E
4.6	Signature of the WIPO Copyright Treaty	E
4.7	Signature of the WIPO Performances and Phonogram Treaty	E
4.8	Mandatory disclosure of business trade secrets such as algorithms or source code	R
4.9	Effective protection covering trade secrets	E
5	Telecom infrastructure and competition	
5.1	Passive infrastructure sharing obligation	E
5.2	Maximum foreign equity share for investment in the telecommunication sector	R
5.3	Presence of shares owned by the government in telecom companies	R
5.4	Functional/accounting separation for operators with significant market power	E
5.5	Other restrictions to operate in the telecom market	R
5.6	Signature of the WTO Telecom Reference Paper	E
5.7	Presence of independent telecom authority	E

Pillar	Indicator	E/R
6	Cross-border data policies	
6.1	Ban to transfer and local processing requirement	R
6.2	Local storage requirement	R
6.3	Infrastructure requirement	R
6.4	Conditional flow regime	R
6.5	Participation in trade agreements committing to open cross-border data flows	E
7	Domestic Data policies	
7.1	Framework for data protection	E
7.2	Minimum period for data retention	R
7.3	Requirement to perform an impact assessment (DPIA) or have a data protection officer (DPO)	R
7.4	Requirement to allow the government to access personal data collected	R
8	Intermediary liability	
8.1	Safe harbour for intermediaries for copyright infringement	E
8.2	Safe harbour for intermediaries for any activity other than copyright infringement	E
8.3	User identity requirement	R
8.4	Monitoring requirement	R
9	Content access	
9.1	Blocking or filtering of commercial web content	R
9.2	Presence of Internet shutdowns	R
9.3	Restrictions on online advertising	R
9.4	Licensing schemes for digital services and applications	R
10	Quantitative trade restrictions for ICT goods, products and online services	
10.1	Import ban applied on ICT goods, products and online services	R
10.2	Other import restrictions, including non-transparent/discriminatory import procedures	R
10.3	Local content requirements (LCRs) on ICT goods for the commercial market	R
10.4	Export restrictions on ICT goods, products and online services	R
11	Technical standards applied to ICT goods, products and online services	
11.1	Open and transparent standard-setting process	E
11.2	Self-certification for product safety	E
11.3	Product screening and additional testing requirements	R
11.4	Restrictions on encryption standards	R
12	Online sales and transactions	
12.1	Maximum foreign equity shares in e-commerce sector	R
12.2	Limits on e-commerce purchases	R
12.3	Licensing scheme for e-commerce providers	R
12.4	Restrictions on online payments	R
12.5	Threshold for 'De Minimis' rule	E
12.6	Restrictions on domain names	R
12.7	Local presence requirement for digital services providers	R
12.8	Framework for consumer protection applicable to online commerce	E
12.9	Ratification of the UN Convention of Electronic Communications	E
12.10	Adoption of UNCITRAL Model Law on Electronic Commerce	E
12.11	Adoption of UNCITRAL Model Law on Electronic Signature	E

This report presents significant findings from the Regional Digital Trade Integration Index (RDTII), highlighting similarities and differences among the economies of Latin America and the Caribbean. After introducing the Digital Trade Integration database and the methodology used in RDTII, the report outlines the main index scores by country and pillar. Jamaica, with the lowest score of 0.14, has the most open regulatory environment for digital trade in the region, whereas Cuba, with the highest score of 0.62, has a regulatory environment that is quite restrictive. The report also summarizes the findings for each of the 12 pillars of RDTII and offers a snapshot of the regulatory similarity across pillars, highlighting the pillars that offer opportunities for practicable regulatory harmonization in the region. The document concludes with some policy recommendations.

