

Treaty restrictions of taxing rights on services

**Presentation of research findings to
Member Countries of the South Centre**

12 March, 2025



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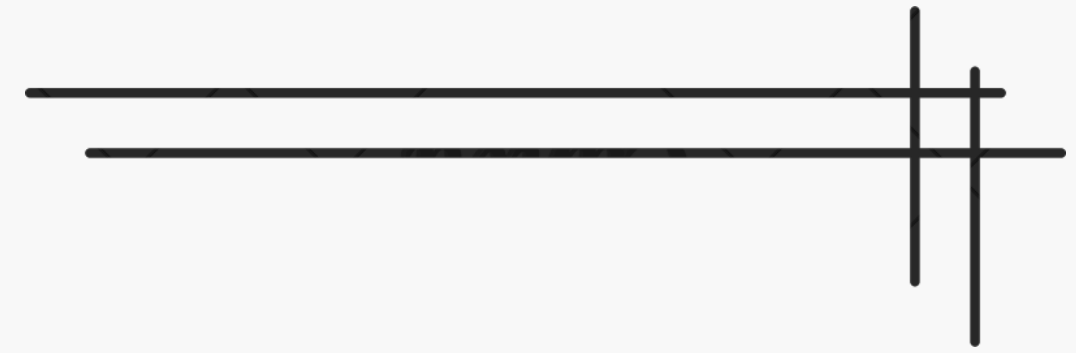
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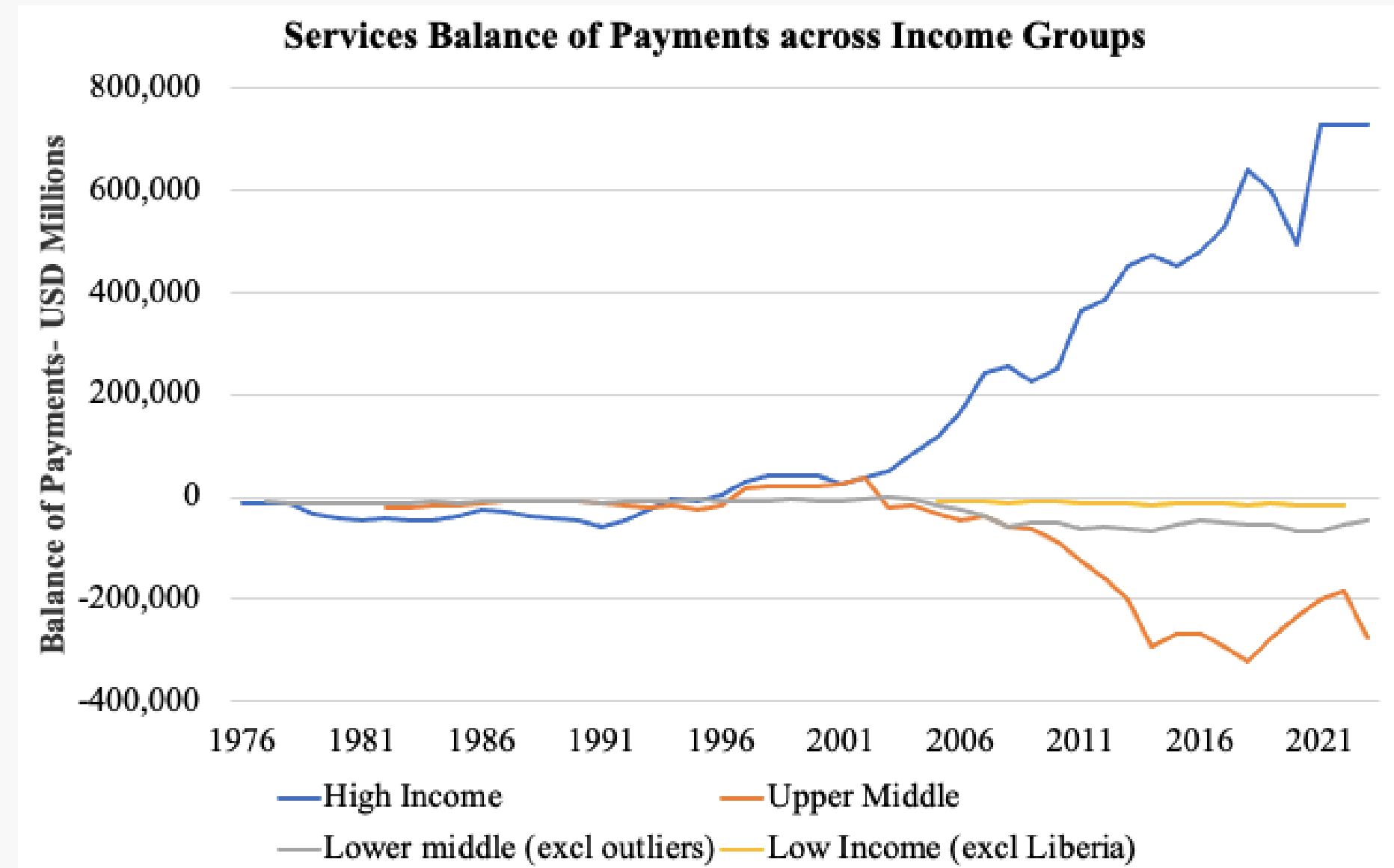
Relevance of paper



Exponential growth in services as a share of GDP since 1995



Growth of trade in services, mainly benefiting high- income countries



Note: BOP values exclude travel and government services

Problem Statement

International tax rules favouring services delivery by non-residents discourage the growth of local service providers, disproportionately impacting developing countries, which are net importers of services

Our paper examines the tax revenue losses of countries after entering into treaties that restrict source taxation of payments to non-residents for services and royalties

Scope of the Paper

- Detailed qualitative analysis of tax treaties and quantitative estimates of the impact of treaty restrictions on tax revenues
- 17 year review period: 2005 to 2021

Selected Developing Countries

SC Members: Argentina, Brazil, Colombia, Nigeria

Non- SC Member: Kenya

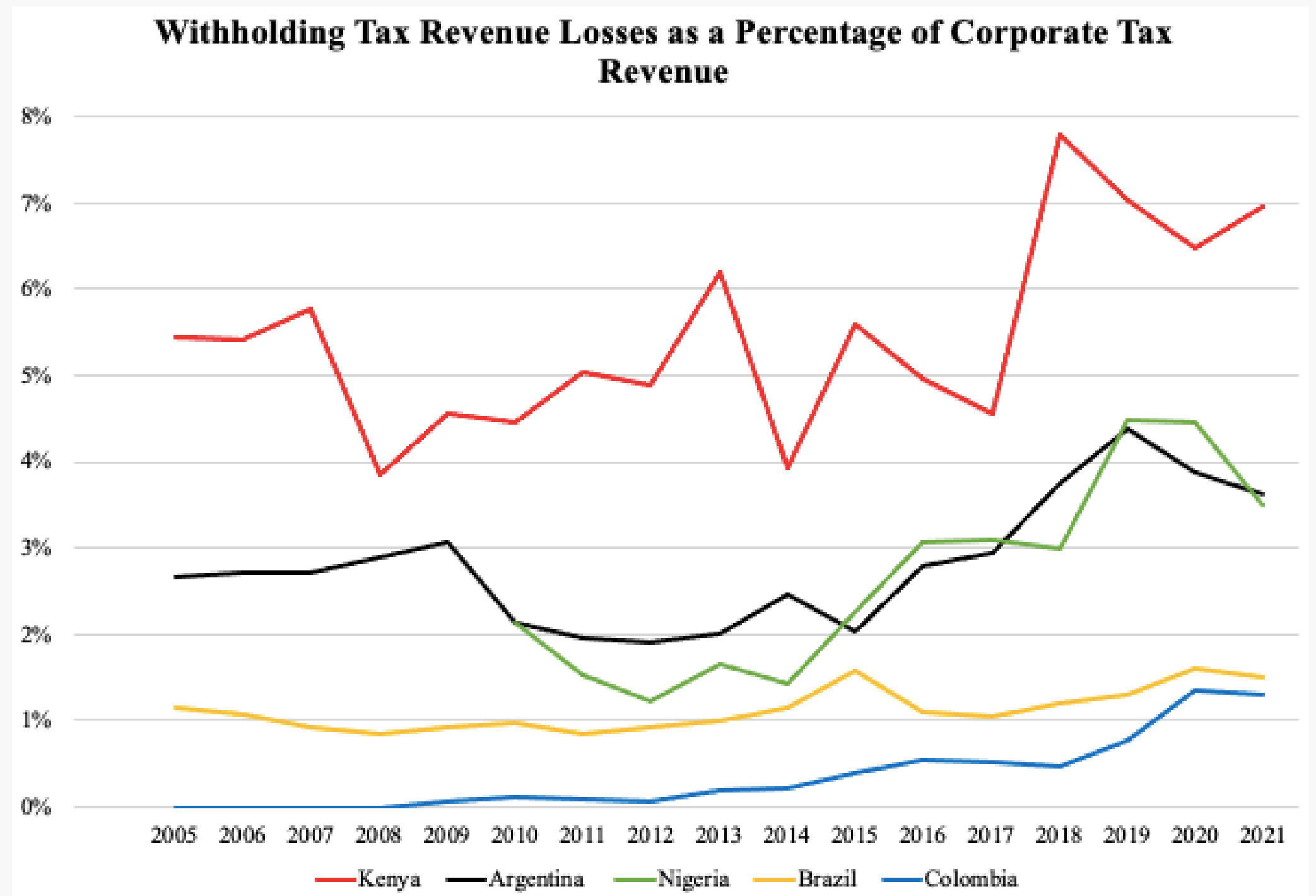
Research Question

What are the revenue losses due to tax treaty restrictions on withholding taxes in each selected country?

Overall Analysis

Until recently, some developing countries held out on entering into treaties that restrict source taxation

Our estimates show increased losses due to the effects of treaty restrictions, as a share of each country's total corporate tax revenues



Overall Analysis cont'd

Our estimates show increased losses in absolute terms over the 17 year review period

Losses are likely to continue to rise, especially if new treaties with OECD countries come into force, notably through ratification of the recently signed Brazil-UK and Argentina-Japan treaties



Argentina



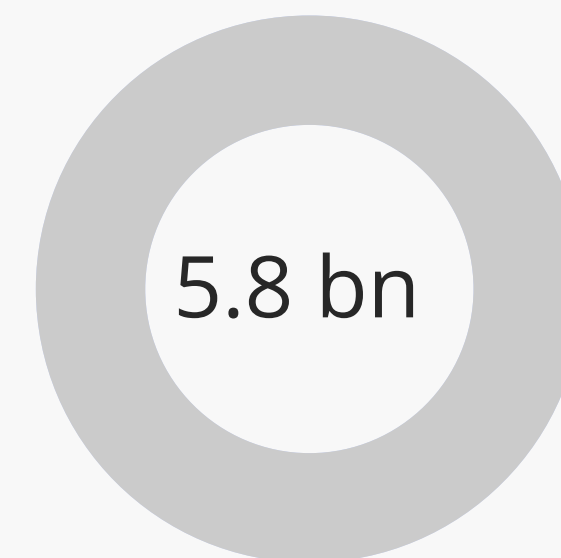
Brazil



Colombia



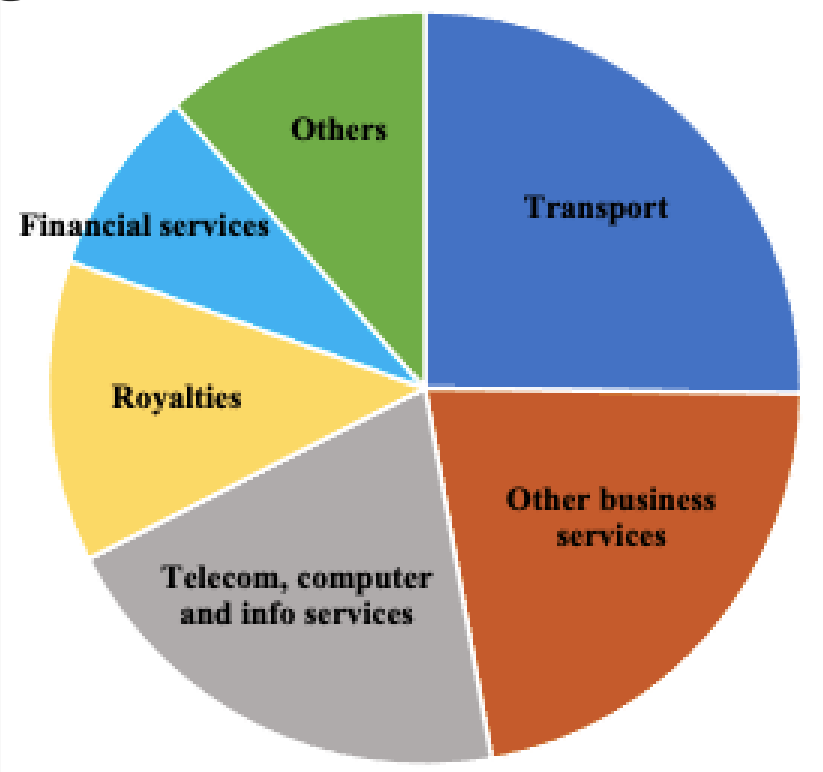
Kenya



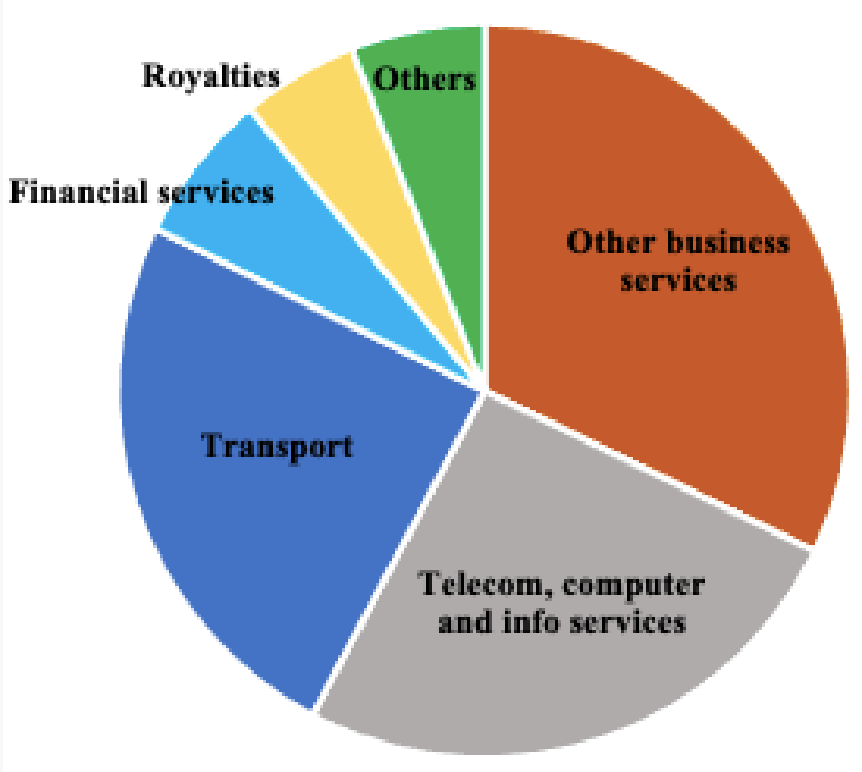
Nigeria

Losses by Sector

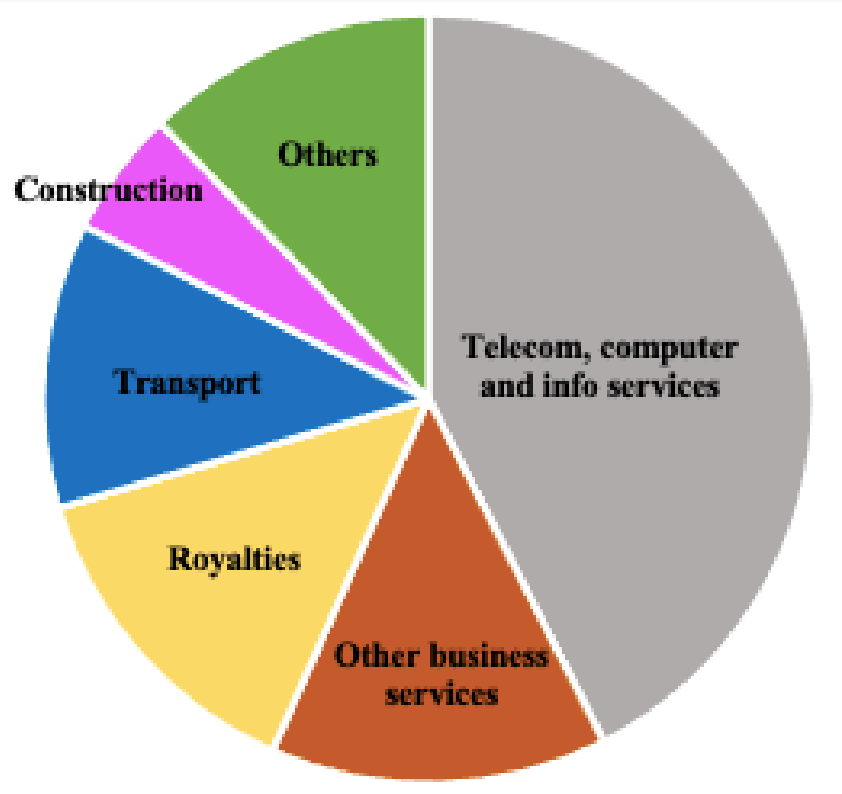
Argentina



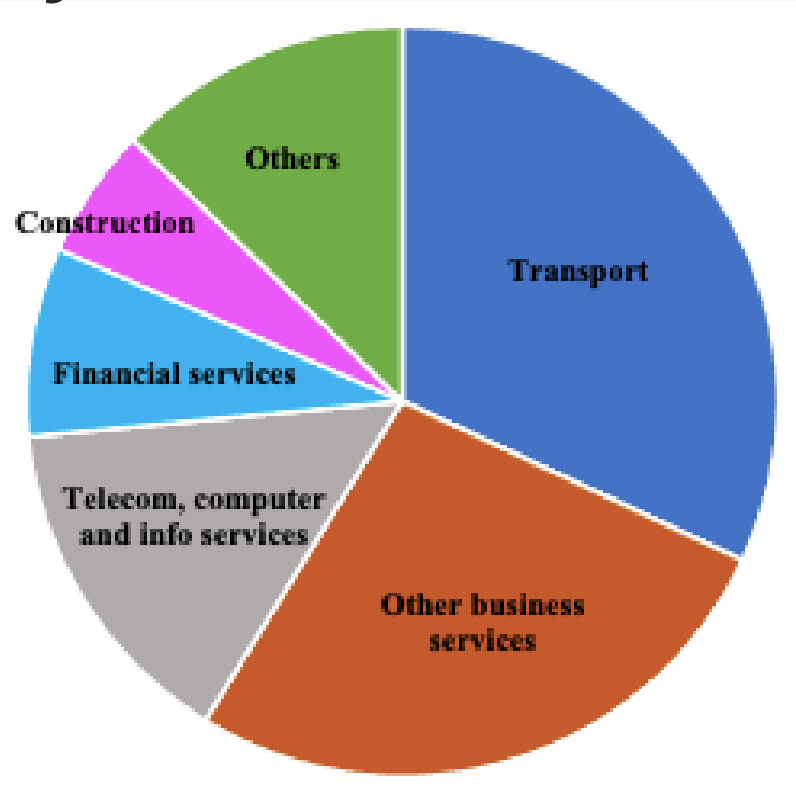
Brazil



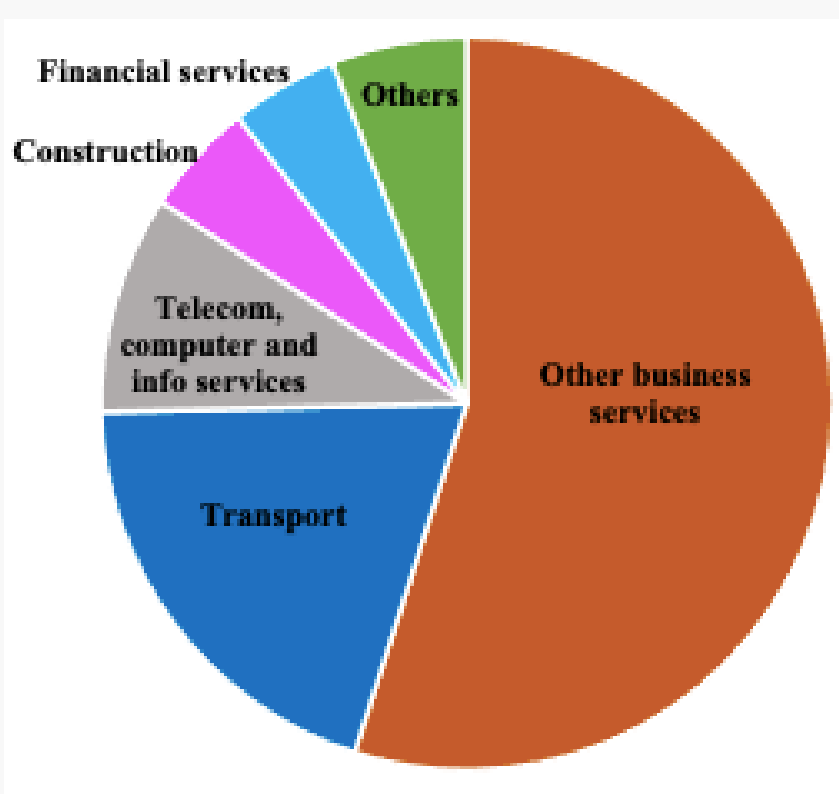
Colombia



Kenya



Nigeria



Qualitative Methodology

Legislative Analysis

Overview

- **Domestic legislation:** Review tax rates for various types of payments to non- residents
- Consider legislative changes during the period and how these impact the applicable tax rates
- Review relevant case law that could have a bearing on the interpretation of domestic and international tax provisions
- **Treaties:** Examine each bilateral treaty, assessing whether its provisions are modeled after the OECD or UN Model, and the applicable treaty rates

Limitations

- **Scope limitation:** Accurate revenue loss estimates should include losses from tax preferences enabling pass- through of profits by conduit structures or reducing the applicable tax rates
- Due to complexity, domestic laws of countries that may be used as conduits were not analyzed in detail



Quantitative Methodology

Balanced Trade in Services (BaTIS) dataset

Overview

- **Scope:** Only public source of data on bilateral payment inflows and outflows for 204 economies (2005–2021)
- **Data sources:** Eurostat, OECD, IMF Balance of Payments and national statistical sources. Report data on payments to non-residents for services and royalties
- **Sector coverage:** We exclude travel (in-country spending by non-residents) and government services: not typically subject to withholding taxes
- **PE considerations:** Payments for services attributable to a PE assumed to be made in-country, so not included in BaTIS data, except for insurance premiums
- **Link to dataset**

Limitations of BaTIS Data

- **Limited reporting:** 65/204 countries reported data for BaTIS, which uses statistical techniques to create a 'full balanced dataset'. May result in under or over estimation of payments
- **Comparison of Reported and 'Balanced' data:** Argentina's reported payment outflows were lower than the balanced estimates for major non-treaty countries and higher for major treaty countries, so balanced values are likely to understate the tax losses
- Different, perhaps more accurate estimations, may be achieved with country-level data

Quantitative Methodology cont'd

- Each BaTIS category and sub- category description analyzed and matched to the domestic legislative and tax treaty categories
- International Trade In Services (ITIS) database used to approximate BaTIS sub- category payment values

BaTIS Service Category	BaTIS Service Sub- Categories	Applicable Tax Category		
		Domestic Legislation	Tax Treaties (OECD)	Tax Treaties (UN)
Manufacturing services on physical inputs owned by others	Goods for processing in reporting economy	Professional/ technical services	Business profits Art. 7	Art. 12A
	Goods for processing abroad			
Maintenance and repair services		Professional/ technical services	Art. 7	Art. 12A
Transport	Sea transport (passenger, freight, other)	Sea transport	International shipping (art. 8)	Art. 8 (alt A/ B)
	Air transport (passenger, freight, other)	Air transport	International air transport (art. 8)	Art. 8 (alt A)
	Others- support and auxiliary services (passenger, freight, other), including containers	Other modes of transport	Art. 7	Art. 7
	Postal and courier services			

Quantitative Methodology cont'd

BaTIS Service Category	BaTIS Service Sub- Categories	Applicable Tax Category		
		Domestic Legislation	Tax Treaties (OECD)	Tax Treaties (UN)
Construction (not substantial enough to be recognised as a branch)		Professional/ technical services	Art. 7	Art. 12A
Insurance and pension services	Direct insurance (life, freight, other direct insurance)	Insurance	Art. 7.	Art. 5.6
	Reinsurance	Reinsurance	Art. 7	Art. 5.6/ 7 (UN model amended in some treaties to include reinsurance)
	Auxiliary insurance (agent commissions, consulting services, actuarial services)	Auxiliary/ other insurance payments	Art. 7	Art. 7
	Pension (pension services, standardised guarantee services)	May be regarded as retirement insurance e.g. Argentina, otherwise professional/ technical services	Art. 7	Art. 7

Quantitative Methodology cont'd

BaTIS Service Category	BaTIS Service Sub- Categories	Applicable Tax Category		
		Domestic Legislation	Tax Treaties (OECD)	Tax Treaties (UN)
Financial services	Explicitly charged and other financial services (do not require special calculation). Assumes no human intervention	Professional/ technical services	Art. 7	Art. 7/12B
	Intermediation services indirectly measured (interest on deposits and loans)	Excluded as outside the scope of this review		
Charges for the use of intellectual property	Franchises and trademarks licensing fees	Royalties	Royalties, excluding software (Art. 12)	Royalties, excluding software (Art. 12), until revised version adopted
	Licences for use of outcomes in R&D			
	Licences to reproduce/ distribute computer software (not impacted by art. 12 OECD exclusion, as this doesn't pertain to the simple use of software)			
	Licences to reproduce/ distribute audio-visual and related products			

Quantitative Methodology cont'd

BaTIS Service Category	BaTIS Service Sub- Categories	Applicable Tax Category		
		Domestic Legislation	Tax Treaties (OECD)	Tax Treaties (UN)
Telecommunications, computer, and information services	Telecommunication services. Assumes no human intervention	Telecommunication transmissions, otherwise professional/ technical services	Art. 7	Art. 7/12B
	Computer services (computer software applications and licences)	Royalties in some countries (e.g. Colombia), otherwise professional/ technical services	Art. 12	
	Computer services other than software (technical support, data processing and storage, maintenance)	Professional/ technical services	Art. 7	Art. 12A
	Information services (news agency services, information services other than news agency)		Art. 7	Art. 7/12B

Quantitative Methodology cont'd

BaTIS Service Category	BaTIS Service Sub- Categories	Applicable Tax Category		
		Domestic Legislation	Tax Treaties (OECD)	Tax Treaties (UN)
Other business services	R&D (work to increase knowledge, sale and proprietary rights, others)	Professional/ management/ technical services	Art. 7	Art. 12A
	Professional and management consulting (legal, accounting, management consulting, public relations, advertising, market research)	Professional/ management/ technical services	Art. 7	Art. 12A/B (online advertising)
	Technical, trade- related and other business services (architecture, engineering, waste treatment, operating lease, trade- related, other business services)	Professional/ management/ technical services	Art. 7	Art. 12A
Personal, cultural, and recreational services	Audio-visual and related services	Professional/ technical services	Art. 7	Art. 12B
	Others (health, education, heritage and recreational services, others)	Professional/ technical services	Art. 7	Art. 12A
Government goods and services		Excluded. Relates to services supplied by governments, or to government units such a embassies, consulates, military, and defence units, which are unlikely to attract WT		

Reporter Country			Argentina										Total Withholding Tax Receipts on Cross Border BOP exclu travel 2005 to 2021	
Expression			Withholding Tax Receipts on Imports											
Unit			US Dollar, Millions											
Year			2021											
Service			Manufacturing services on physical inputs owned by others	Maintenance and repair services n.l.e.	Transport	Construction	Insurance and pension services	Explicitly charged Financial services	Charges for the use of intellectual property n.l.e.	Telecommunica- tions, computer, and information services	Other business services	Personal, cultural, and recreational services		
Legislative Withholding Tax Rate							3.5%			3.5%		17.50%		
Measure			21.0%	21.0%	3.5%	21%	35.0%	35.0%	20%	21.0%	21%	21%		
Partner Country														
Australia				0.0004	0.0126	1.2407	0.0108	0.1879	0.4974	0.7809	2.0389	1.5029	0.5350	118.64
Belgium				0.0000	0.0506	0.3561	0.0001	0.9818	2.2299	0.8303	4.2472	7.3997	0.2255	327.98
Canada				0.0003	0.2599	1.4606	0.0000	0.1168	0.4532	1.6704	2.7299	14.9978	0.1914	291.45
Chile				0.0006	1.9511	6.1561	0.1788	0.4710	0.5001	0.4417	3.2657	7.4353	0.2779	714.98
Denmark				0.0000	0.0679	8.7710	0.2823	0.1436	0.3966	0.8425	0.5647	1.6028	0.0070	136.71
Finland				0.0000	0.0000	0.0947	0.0000	0.0292	0.0061	0.0133	1.1941	0.5564	0.0026	70.58
France				0.2212	1.3061	4.2262	0.0003	1.3119	1.1436	11.4064	4.1561	33.0638	0.5919	1,009.37
Germany				0.0000	5.2577	10.6925	0.2112	4.3370	1.8569	16.0934	18.8457	15.6953	0.4086	1,116.71
Italy				0.1847	0.5308	0.4166	1.2014	1.2634	1.8090	4.6208	4.7975	6.9062	1.8701	540.21
Mexico				1.4029	0.1971	0.5937	0.0008	0.2237	0.3544	1.6981	5.6201	5.3915	0.5601	82.27
Netherlands				0.0000	1.7308	2.7651	0.1934	0.4376	1.4229	13.5987	17.2309	31.9904	0.1585	1,810.04
Norway				0.0202	0.1892	1.5623	0.0240	0.1211	0.3531	0.0678	0.9138	1.0837	0.0621	68.17
Spain				0.3515	3.1772	4.5466	0.4521	5.9627	1.7820	4.6962	18.5844	22.8407	5.0253	1,256.34
Sweden				0.0000	2.8855	0.1491	0.0564	0.1738	0.1375	1.5961	4.7824	42.1827	16.0923	660.06
Switzerland				0.0453	1.5951	3.2751	0.1095	3.7081	9.8285	21.2226	7.4193	10.2307	0.5812	812.85
United Kingdom				0.0000	1.2956	2.2199	0.0002	15.3903	0.1200	2.6023	18.7935	11.6216	2.7785	1,186.19
	Bolivia			0.0004	0.0000	0.6364	0.0006	0.1041	0.0001	0.0007	0.2666	0.5930	0.0080	53.42
	Brazil			0.0034	1.2975	6.4851	0.0385	3.1963	1.0098	3.3050	6.9082	13.9253	0.9914	950.49
	Russia			0.0155	0.0611	0.0316	0.0026	0.0346	0.0115	0.0094	0.0531	0.0942	0.0321	5.86
	UAE			0.0001	0.1240	1.7205	0.1352	0.7107	0.3501	0.1174	1.6160	3.5764	0.1781	60.05
	Sub- Total			2.25	21.99	57.40	2.90	38.91	24.26	85.61	124.03	232.69	30.58	11,272.36

Argentina: Estimated WT revenue before treaty adjustments

Reporter Country			Argentina										Total Withholding Tax Payments (Receipts) on Imports 2005 to 2021
Expression			Net Withholding Tax Payments (Receipts)										
Unit			US Dollar, Millions										
Year			2021										
Service			Manufacturin g services on physical inputs owned by others	Maintenance and repair services n.l.e.	Transport	Construction	Insurance and pension services	Explicitly charged Financial services	Charges for the use of Intellectual property n.l.e.	Telecommuni cations, computer, and information services	Other business services	Personal, cultural, and recreational services	
Revised DTT Withholding Tax Rates			18%	18%		18%			18%	18%	18%	18%	
			15%	15%		15%			15%	15%	15%	15%	
									14%				
			12%	12%		12%			12%	12%	12%	12%	
			10%	10%		10%			10%	10%	10%	10%	
									9%				
									8%				
Effective Treaty Date			0%	0%	0%	0%	0%	0%		0%	0%	0%	
Australia		1-Jan-2000	0.0002	0.0060	0.0000	0.0052	0.1103	0.0000	0.4686	0.0000	0.7157	0.2946	37.11
Belgium		1-Jan-2000	0.0000	0.0241	0.0000	0.0000	0.0696	0.0000	0.4151	0.0000	3.5237	0.1225	102.21
Canada		1-Jan-1995	0.0001	0.1238	0.0000	0.0000	0.0650	0.0000	0.8352	0.0000	7.1418	0.1074	114.25
Chile		1-Jan-2017	0.0003	0.9291	0.0000	0.0851	0.0988	0.0000	0.2650	0.0000	7.4353	0.1471	627.89
Denmark		1-Jan-1998	0.0000	0.0323	0.0000	0.0000	0.0097	0.0000	0.4212	0.0000	0.7632	0.0037	26.23
Finland		1-Jan-1997	0.0000	0.0000	0.0000	0.0000	0.0278	0.0000	0.0066	0.3794	0.2650	0.0014	23.97
France		1-Jan-1982	0.1896	1.1195	0.0000	0.0002	0.0000	0.0000	10.2657	0.0000	28.3404	0.5531	722.08
Germany		1-Jan-1980	0.0000	3.7555	0.0000	0.1509	1.4192	0.0000	12.0700	7.1531	11.2109	0.3138	560.96
Italy		1-Jan-1984	0.1583	0.4550	0.0000	1.0297	0.7194	0.0000	3.2345	0.0000	5.9196	1.6864	260.81
Mexico		1-Jan-2018	0.6681	0.0939	0.0000	0.0004	0.0000	0.0000	1.0189	0.0000	2.5674	0.3091	52.32
Netherland		1-Jan-1999	0.0000	0.8242	0.0000	0.0921	0.0324	0.0000	6.7994	0.0000	15.2335	0.0878	726.30
Norway		1-Jan-2002	0.0096	0.0901	0.0000	0.0114	0.0770	0.0000	0.0339	0.0000	0.5160	0.0327	14.91
Spain		1-Jan-2014	0.1674	1.5130	0.0000	0.2153	0.2175	0.0000	2.3481	0.0000	10.8765	2.6592	783.77
Sweden		1-Jan-1998	0.0000	1.3741	0.0000	0.0268	0.0093	0.0000	0.7980	0.0000	20.0870	8.3036	252.20
Switzerland		1-Jan-2016	0.0216	0.7596	0.0000	0.0521	0.3239	0.0000	10.6113	0.0000	4.8717	0.3075	586.20
United Kingdom		1-Jan-1998	0.0000	0.6169	0.0000	0.0001	1.0858	0.0000	1.3012	0.0000	5.5341	1.3598	253.74
	Bolivia	1-Jan-1980	0.0004	0.0000	0.0000	0.0006	0.0000	0.0000	0.0007	0.0000	0.5930	0.0080	19.47
	Brazil	1-Jan-1983	0.0016	0.6179	0.0000	0.0183	1.8244	0.0000	1.9830	0.0000	6.6311	0.5246	620.28
	Russia	1-Jan-2013	0.0111	0.0436	0.0000	0.0018	0.0278	0.0000	0.0071	0.0000	0.0673	0.0256	4.27
	UAE	1-Jan-2020	0.0000	0.0590	0.0000	0.0644	0.4520	0.0000	0.0587	0.0000	1.7030	0.0943	49.82
	Total		1.23	12.44	0.00	1.75	6.57	0.00	52.94	7.53	134.00	16.94	5,838.80

Argentina: Estimated WT revenue following treaty adjustments

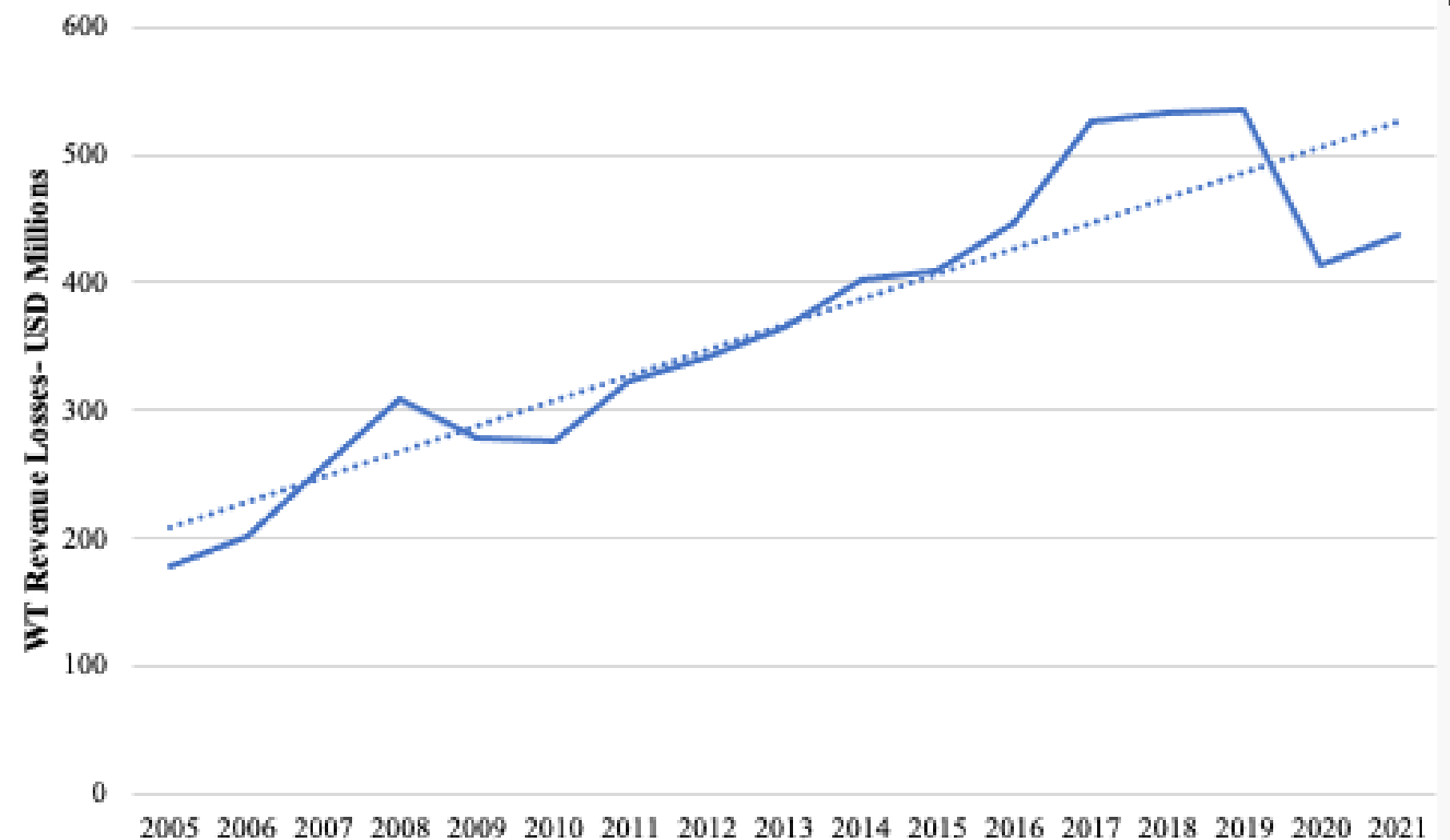
Partner Country	WT Receipts using domestic WT rates US Dollar, Millions	WT Receipts using treaty WT rates US Dollar, Millions	WT Revenue Losses US Dollar, Millions
Netherlands	1,810.04	726.30	(1,083.74)
United Kingdom	1,186.19	253.74	(932.45)
Germany	1,116.71	560.96	(555.75)
Spain	1,256.34	783.77	(472.57)
Sweden	660.06	252.20	(407.85)
United States	381.26	22.14	(359.11)
Brazil	950.49	620.28	(330.22)
France	1,009.37	722.08	(287.29)
Italy	540.21	260.81	(279.40)
Switzerland	812.85	586.20	(226.65)
Belgium	327.98	102.21	(225.77)
Canada	291.45	114.25	(177.19)
Denmark	136.71	26.23	(110.48)
Chile	714.98	627.89	(87.09)
Paraguay	81.63	-	(81.63)
Australia	118.64	37.11	(81.53)
Greece	63.73	7.74	(55.99)
Japan	55.14	0.17	(54.97)
Norway	68.17	14.91	(53.26)
Finland	70.58	23.97	(46.61)
Total	11,652.52	5,742.97	(5,909.55)

Argentina: Estimated WT revenue losses (top 20 countries)

Argentina

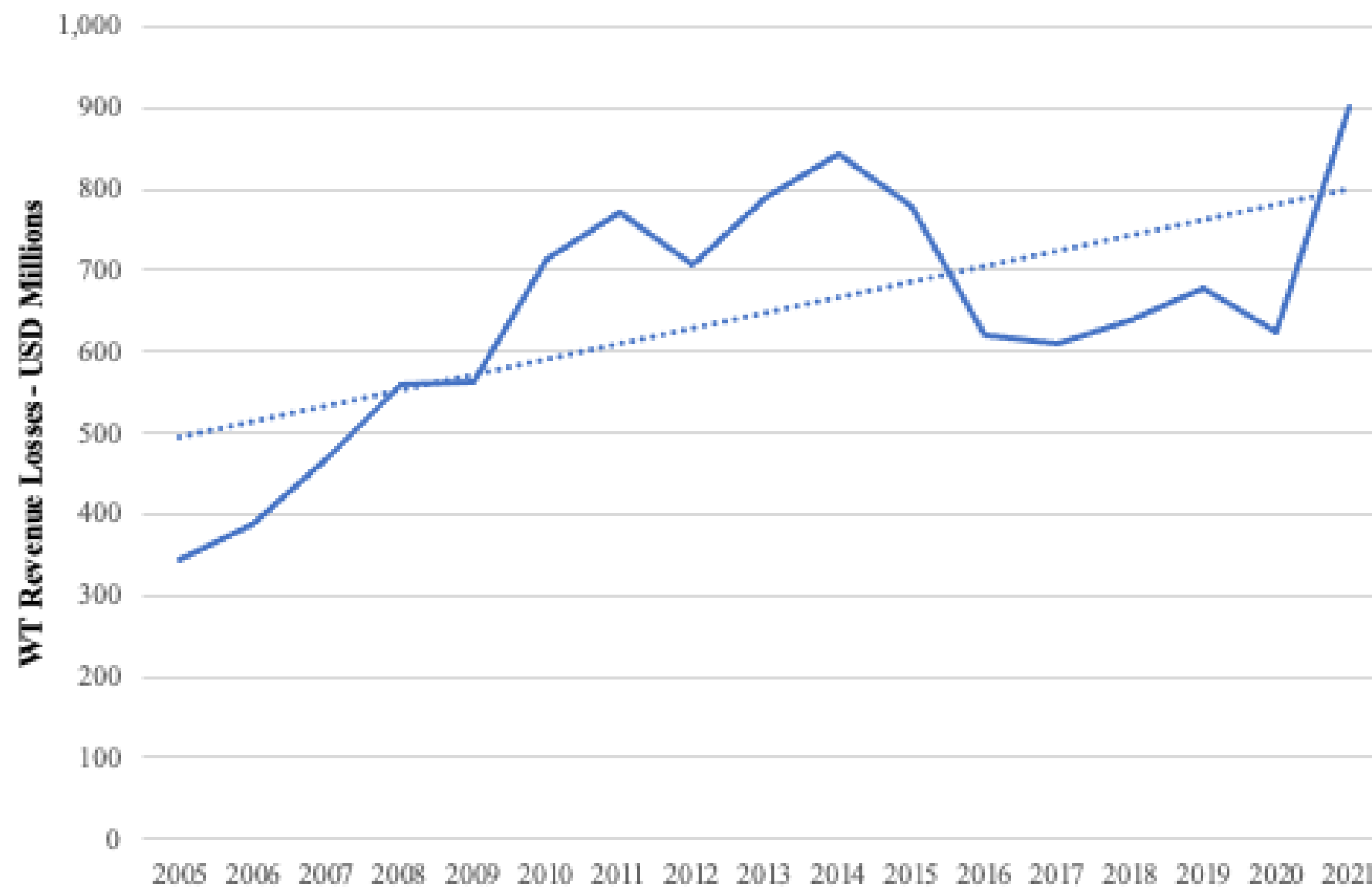
- **Bilateral treaties:** 20 in force since 1978
- **Trade deficit:** Service imports peaked in 2018, exceeding exports by 1.67x
- **Tax revenue loss:** Estimated at USD 6,106m
- 60% attributable to OECD countries (Netherlands, UK, Germany, Spain and Sweden)
- 11% linked to countries with international transport agreements (USA, China, Israel, Greece, Panama, Portugal)
- Significance of transport because of Argentina's reliance on agricultural commodity trade

Trend in Withholding Tax Revenue Losses



Brazil

Trend in Withholding Tax Revenue Losses



- **Bilateral treaties:** 33 in force since 1967
- **Source tax protection:** Efforts to protect source tax on royalties and technical services through protocols and mutual agreement procedures; contested in cases like Finland and Germany
- **Trade deficit:** Service imports peaked in 2014 at nearly twice the exports; gap remains significant
- **Tax revenue loss:** Estimated at USD 11,003m
- 60% attributed to imports from France, Netherlands and India
- Treaty with Luxembourg accounts for only 3% of total
- Favourable regimes: WT revenue losses unaffected as no DTAs exist with these countries

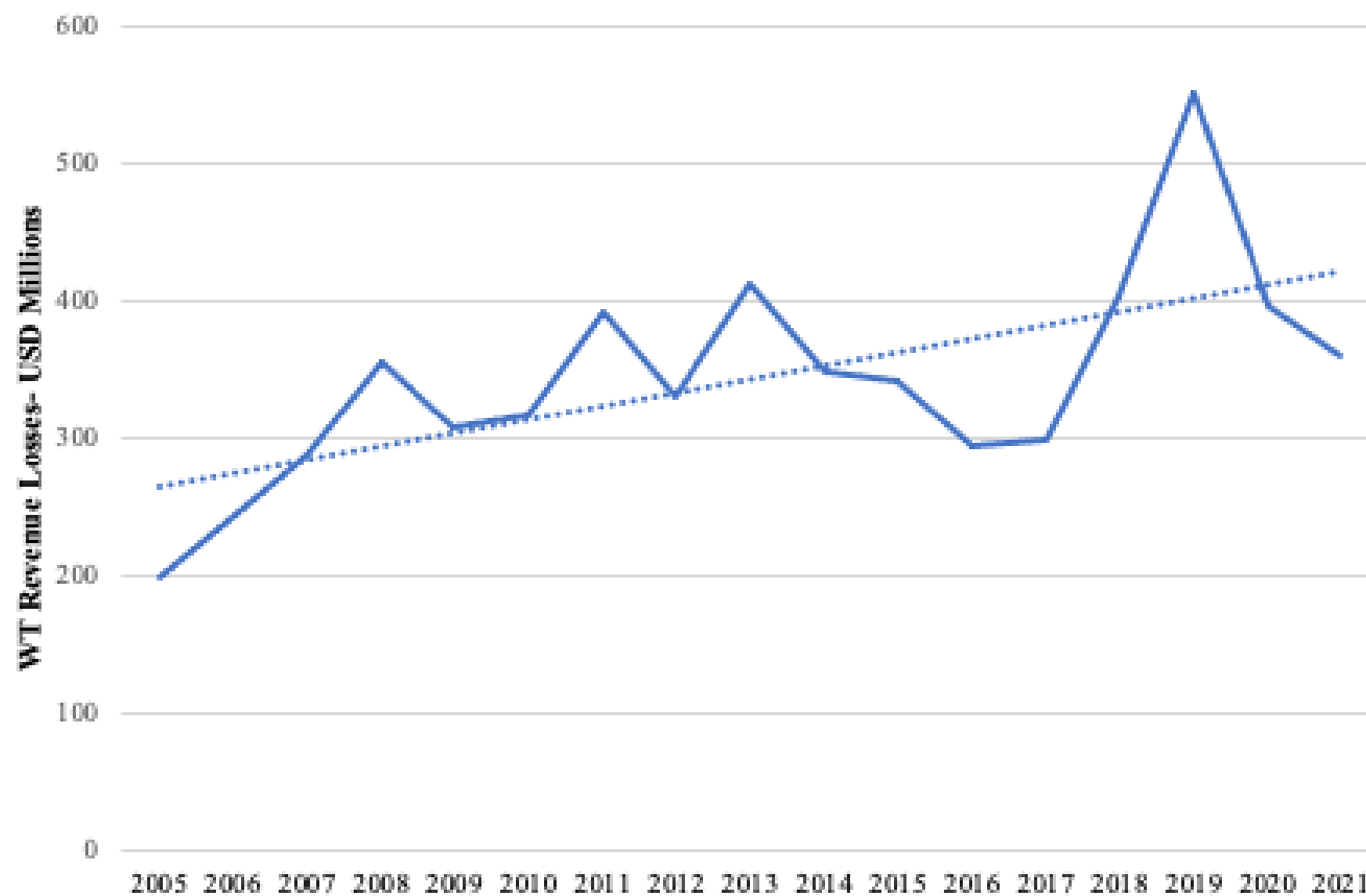
Colombia

- **Bilateral treaties:** 10 in force since 2008
- **Source tax protection:** Initially adhered to Andean Community policy, no tax treaties until policy change in 2004. First treaty with Spain in force from 2009
- Began OECD accession in 2013, signed a UK DTA in 2016 which triggered MFN clauses in Canada, Mexico, Czechia, and Portugal treaties. Spain, Chile, Switzerland potentially triggered, although tax authority determined otherwise
- No firm conclusions can be drawn on MFN impact because of limited data (two years)
- **Trade deficit:** Services imports peaked in 2014 at twice the value of exports.
- **Tax revenue loss:** USD 894m, rising sharply from 2018; 60% attributed to Spain, India, and Switzerland.



Nigeria

Trend in Withholding Tax Revenue Losses

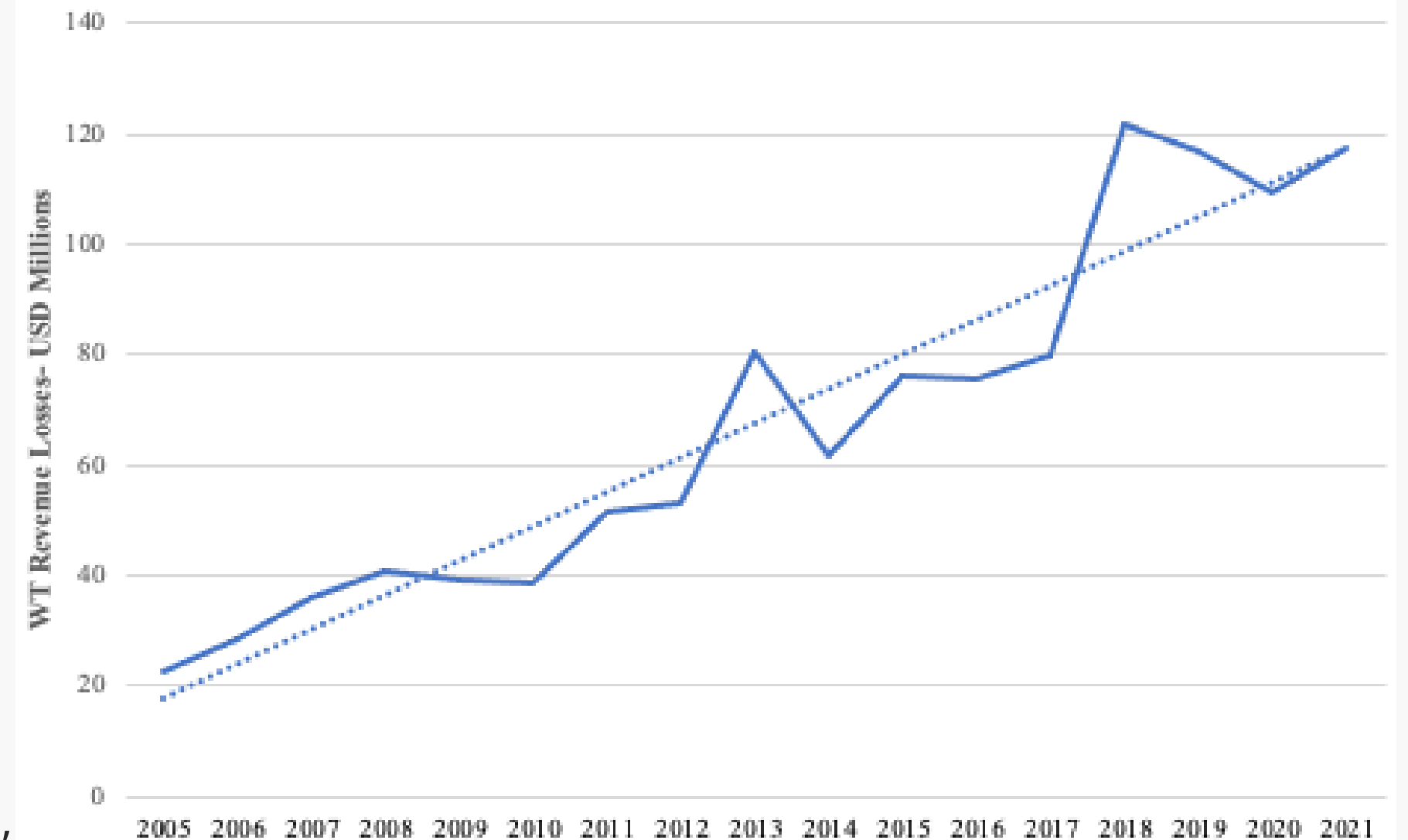


- **Bilateral Treaties:** 16 in force since 1968
- **Source tax protection:** Single contract principle enforced by courts to restrict foreign companies from directly contracting with local customers for cross-border services.
- New significant economic presence rules applicable from 2020 to all services, not just digital, reducing non- resident payment outflows
- Source taxation of all service categories restricted in existing treaties
- Unilateral 7.5% WT rate applied to treaty partners until 2022, when the standard domestic rate was reinstated unless specified in a DTA
- **Trade deficit:** Services imports peaked in 2019 at four times export values.
- **Tax revenue loss:** USD 5.839m, with the UK accounting for nearly 40%; 75% attributed to the UK, Netherlands, and France.

Kenya

- **Bilateral treaties:** 15 in force since 1964
- **Source tax protection:** Early treaties retained the right to apply the full domestic WT. Reduction to 12.5% for the UK from 1977. Since 2007 (France treaty), this right has not been included, except in Seychelles treaty
- Article 12 definition contested (Seven Seas); KRA unable to tax this under Other Income article (McKinsey). WT deduction extended to digital content monetization (which includes software) from 2023
- **Trade deficit:** Services trade has grown significantly, with exports rising faster than imports
- **Tax revenue loss:** USD 1.148m, 80% attributed to UK, India, and France; the UK alone accounts for nearly 40%, mainly from transport, technical, and financial services.

Trend in Withholding Tax Revenue Losses



Comparison by Country

Argentina

- 20 bilateral treaties (from 1978)
- 16 international transport agreements (11% of tax losses)
- 60% of losses attributed to the Netherlands, UK, Germany, Spain, Sweden and the US

Brazil

- 33 bilateral treaties (from 1967)
- Favourable and privileged regimes
- Tried to protect source tax on royalties and technical services through protocols
- 60% of losses attributed to France, Netherlands and India

Colombia

- 10 bilateral treaties (from 2008)
- UK treaty signed in 2016 triggered MFN clauses in Canada, Mexico, Czechia, Portugal treaties
- 60% of losses attributed to Spain, India and Switzerland

Kenya

- 15 bilateral treaties (from 1964)
- Contention on definition of royalties, recent legislative amendment to expand scope
- 80% of losses attributed to the UK, India and France

Nigeria

- 16 bilateral treaties (from 1968)
- Source taxation of services is restricted in all treaties
- 7.5% unilateral WT rate reduction applied uniformly until June 2022
- 70% of losses attributed to the UK, Netherlands and France

Way Forward

Negotiations for UN Framework Convention on International Tax Cooperation 2025- 2027

Early Protocol: Taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy

Possible options

- WT on payments for all services: UN Tax Committee article XX
- Formulary taxation of net income from sales
- Formulary apportionment of MNE's consolidated income



Protocol design

- Formal binding agreement on balanced and equitable principles for apportionment
- Framework for coordination. Coalition of willing states could agree to implement the new approach using detailed common standards, based on Pillar One Amount A



Thank You

12 March, 2025

