

**Working Party on Domestic Regulation****DISCIPLINES ON DOMESTIC REGULATION PURSUANT TO GATS ARTICLE VI:4  
CONSOLIDATED WORKING PAPER**Note by the Chairman

1. At the meeting held on 19 and 20 June 2006, Members requested that I prepare a first consolidated working paper of possible regulatory disciplines under Article VI:4 of the GATS, based on proposals submitted by Members. This Note is prepared in response to that request.
2. Discussions in the WPDR on the text proposals have shown that Members still hold divergent views on many proposed elements. Therefore, I am not yet in a position to prepare a Chairman's negotiating text as such, containing compromise language on all the proposed elements. Obviously more discussion and negotiations are needed. Members also agreed that a mere compilation of all the various texts that have been proposed would have not been useful at this stage. Accordingly, I have prepared this working paper as a tool to facilitate Members' work on the development of future disciplines.
3. In preparing this paper, I have attempted to rationalize the presentation of proposals by avoiding duplication (*i.e.*, merging similar provisions); and ensuring consistency of language across different sections of the paper. On those issues on which Members' positions appeared to point to clear alternatives, I have reflected the different points of views by inserting alternative texts representing Members' positions. I have not included in the paper any of those formulations which simply referred to the applicability of GATS provisions, such as those on scope of application and exceptions. Assuming that the Article VI:4 disciplines will become an integral part of the GATS Agreement, none of these references should be necessary. I have also avoided any references to the applicability to any specific mode of supply, on the understanding that any future disciplines would be mode neutral in their application. Furthermore, I have taken out definitions of concepts already used in the GATS, in order to avoid overlapping definitions and legal uncertainty.
4. In preparing this paper, I have endeavoured to be as inclusive as possible. However, this does not mean that any of the elements reproduced in this paper enjoy the consensus of Members. I am aware that delegations continue to be cautious about the substance and prescriptiveness of a number of these elements. In this respect, I would like to point out that at this stage the inclusion in the paper of any elements is clearly without prejudice to the final outcome of the negotiations and particularly of how the text on a given Article VI:4 element would eventually be formulated.
5. In some instances I have not included some proposed elements, which were either not formulated in specific text and/or which would benefit from further discussions in the WPDR such as: (i) temporary suspension; (ii) application of WTO dispute settlement for developing countries; (iii) exception for measures taken for development objectives; (iv) differential implementation according to the level of development; (v) modification and termination of measures; (vi) administrative guidance relating to licenses and qualifications. This list is obviously not a closed one. Members may also raise any other issues if they so wish. In this respect, I would like to point out that the non-inclusion of these texts (like the intentional or accidental exclusion of any other elements from Members' proposals) is without prejudice to the substance of the proposed elements and to their possible inclusion at a later stage.
6. This Note is being circulated under my own responsibility as the Chairman of the Working Party. It has been prepared with a view to facilitating domestic consultations and as a tool for

negotiations in the Working Party, without prejudice to Members' proposals and positions on the development of regulatory disciplines under Article VI:4 of the GATS. It is meant to help Members to move forward in the negotiations with the objective of fulfilling the mandate contained in the Hong Kong Ministerial Declaration. It is expected to be subject to further revisions on the basis of discussions in the Working Party and inputs by Members.

## A. OBJECTIVES

1. These disciplines shall not be construed to prevent Members from exercising the right to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives, and given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right is recognized. These disciplines also shall not be construed to prescribe or impose any particular regulatory approaches or any particular regulatory provisions in domestic regulations.

2. These disciplines shall not be construed to prevent a Member from exercising the right to introduce or maintain regulations to ensure provision of universal service, in a manner consistent with its obligations and commitments under the GATS.

3. The objective of these disciplines is to ensure that measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards do not constitute unnecessary barriers to trade in services and that they are *inter alia*:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to meet specific national policy objectives including to ensure the quality of the service<sup>1</sup>; and
- (c) in the case of licensing and qualification procedures, not in themselves a restriction on the supply of the service.

## B. SCOPE OF APPLICATION

1. These disciplines apply to measures by Members relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards affecting trade in services in sectors where specific commitments are undertaken. They do not apply to measures, which constitute limitations subject to scheduling under Article XVI and XVII.

## C. GENERAL PROVISIONS

1. Each Member shall ensure that measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards are not formulated, introduced, implemented, administered or applied with a view to creating unnecessary barriers to trade in services.<sup>2</sup>

2. Members recognize the role of international standards in facilitating trade in services, and are encouraged to consider following international standards of relevant international organizations<sup>3</sup> in

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<sup>1</sup> Many delegations have made no proposals on the concept of necessity and have expressed their opposition to its inclusion in the disciplines.

<sup>2</sup> *Ibid.*

<sup>3</sup> **[Proposal i]:** The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO. **[Proposal ii]:** The term "relevant international organizations" refers to international bodies whose membership is open to the relevant governmental and non-governmental bodies (as per Article I:3(a)(ii) of the GATS) of at least all Members of the WTO. International standards that were not approved by consensus or by international organizations that do not follow the principle of "one country-one vote" are not eligible for the provisions in this paragraph.

respect of measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards. In determining whether a Member is in conformity with the obligations in these disciplines, account shall be taken of international standards of relevant international organizations applied by that Member.

3. Nothing in these disciplines shall be construed to prevent a Member or other competent authority, in pursuing its legitimate national policy objectives, from adopting, maintaining or applying any measure that results in a higher level of requirements than would be achieved if the measure were based on the relevant international standards.

#### **D. DEFINITIONS**

1. "Licensing requirements" are substantive requirements, other than qualification requirements and technical standards, with which a service supplier is required to comply in order to obtain or renew authorization to supply a service.

2. "Licensing procedures" are administrative or procedural rules relating to the administration of licensing requirements for the supply of a service, including those relating to submission and processing of an application for a licence or renewal thereof.

3. "Qualification requirements" are substantive requirements relating to the competence to supply a service that a service supplier is required to demonstrate prior to obtaining authorization to supply a service.

4. "Qualification procedures" are administrative or procedural rules relating to the administration of qualification requirements, including those aiming at verifying the compliance of candidates with qualification requirements as well as those relating to acquiring or supplementing such qualifications.

5. "Technical standards" are measures that lay down the characteristic of a service or the manner in which it is supplied. Technical standards also include the procedures relating to the enforcement of such standards.

#### **E. TRANSPARENCY**

1. Each Member shall ensure that measures of general application relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards are made publicly available by publication through either printed or electronic means, through designated publications or other publicly accessible channels, or otherwise made publicly available in such a manner so as to enable any interested persons to become acquainted with them.

2. Each Member shall maintain or establish appropriate mechanisms for responding to enquiries from any interested persons regarding any measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards. Such enquiries may be addressed through the enquiry and contact points established under Articles III and IV of the GATS or any other mechanisms as appropriate.

3. Each Member shall ensure that the following information are made publicly available or, where making publicly available is not practicable, made available when responding to enquiries in an easily accessible manner, and, where possible, by electronic means:

- (a) whether any authorization, including application and/or renewal where applicable, is required for the supply of specific services;

- (b) the official titles, addresses and contact information of the relevant competent authorities;
- (c) any applicable licensing requirements and criteria, terms and conditions of licenses, and the licensing procedures and fees;
- (d) any applicable qualification requirements, criteria and procedures (including fees) for verification and assessment of qualifications, and any competency assessment including examination requirements and their content and procedures;
- (e) any applicable technical standards;
- (f) the normal timeframe for processing of an application;
- (g) any channel for appeal or review of an application;
- (h) any monitoring, compliance or enforcement procedures including notification procedures for non-compliance;
- (i) the eligibility of persons, firms and institutions to make such applications;
- (j) where there is public involvement in the licensing process, information on how that involvement is provided for; and
- (k) any exception, derogation or changes in or from the rules concerning licensing procedures or the list of service activities subject to licensing.

**4. [Proposal i]**

Each Member shall endeavour to:

- (a) publish in advance any measures of the type referred to in paragraph E.1 that it proposes to adopt; and
- (b) provide interested persons and other Members a reasonable opportunity to comment on such proposed measures.

Each Member shall endeavour to:

- (c) at the time it adopts such final measures, address in writing substantive issues raised in comments received from interested persons with respect to the proposed measures; and
- (d) allow a reasonable period of time between publication of such final measures and their effective date.

**[Proposal ii]**

Each Member shall endeavour to ensure that any measures of general application it proposes to adopt in relation to matters subject to these disciplines are published in advance, and a reasonable opportunity is available for interested persons, including those of other Members, to comment on such proposed measures.

## **F. LICENSING REQUIREMENTS**

1. Each Member shall ensure that licensing requirements are pre-established, objective, transparent and publicly available. Licensing requirements shall be relevant to the activities to which they apply.
2. Each Member shall ensure that licensing requirements do not act as barriers to trade in services and are not more trade restrictive than required to fulfil national policy objectives.<sup>4</sup>
3. Where residency requirements not subject to scheduling under Article XVII of the GATS apply in licensing requirements, each Member shall consider whether less trade restrictive means could be employed to achieve the purposes for which these requirements were established taking into account costs and local conditions.<sup>5</sup>

## **G. LICENSING PROCEDURES**

1. Each Member shall ensure that licensing procedures are pre-established, objective, transparent and publicly available.
2. The decision of and the procedures used by the competent authority preparing, adopting or applying licensing procedures shall be impartial with respect to all market participants. In particular, it shall be separate from any supplier of services for which a licence is required.

### **3. [Proposal i]**

Members shall ensure that licensing procedures are not in themselves a restriction on the supply of services.

### **[Proposal ii]**

In the application of licensing procedures, each Member shall ensure that licensing procedures and related documentation, including those for renewal, where applicable, should not in and of themselves unduly impede the applicants' fulfilment of licensing requirements.

### **[Proposal iii]**

Each Member shall ensure that licensing procedures and related documentation requirements, including those for renewal where applicable, are not more burdensome than necessary to ensure that applicants fulfil or comply with the licensing requirements and are not in themselves a restriction on the supply of service.<sup>6</sup>

4. Application procedures and, where applicable, renewal procedures shall be as simple as possible. Applicants shall be allowed a reasonable period for the submission of licence applications. Applicants shall, in principle, have to approach only one competent authority in connection with an application for a licence.

5. Each Member shall ensure that the documentation requirements including requirements on format are reasonable and relevant to the activities to which the licensing requirements apply.

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<sup>4</sup> Many delegations have made no proposals on the concept of necessity and have expressed their opposition to its inclusion in the disciplines.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

6. Application for licences shall, wherever feasible, be possible at any time, and shall be processed upon receipt. Wherever possible, applications should be accepted in electronic format under the same conditions of authenticity as paper submissions.
7. The establishment of the authenticity of documents shall be sought through procedures which are pre-established, publicly available and, wherever possible, authenticated copies should be accepted in place of original documents.
8. The competent authority shall, after receipt of an application, inform the applicant whether the application is considered complete under the Member's domestic laws and regulations and in the case of incomplete applications, identify the additional information that is required to complete the application and provide the opportunity to correct deficiencies within a reasonable timeframe. The competent authority shall notify the applicant without undue delay, of the status of its application.
9. Each Member shall ensure that if a license application is rejected by the competent authority, the applicant shall be informed in writing and without delay. An unsuccessful applicant shall be informed upon request of the reasons for rejection of the application, as appropriate, and of the possibility and timeframe for an appeal against the decision. An applicant shall be permitted, within reasonable limits, to resubmit applications for licensing.
10. Each Member shall ensure that processing by the competent authority under licensing procedures, including reaching a decision on an application for a license after receiving a complete application, is completed within a reasonable timeframe. In particular, each Member shall endeavour to establish and publicise the normal processing timeframe under the licensing procedures.
11. Each Member shall ensure that any licensing fees<sup>7</sup> have regard to the administrative costs involved and do not in themselves represent an impediment to engaging in the relevant activity. This shall not preclude the recovery of any additional costs of administering licensing requirements and any other administrative activities related to the regulation of the relevant services.
12. Each Member shall ensure that a licence, once granted, enters into effect without undue delay.

## **H. QUALIFICATION REQUIREMENTS**

1. Each Member shall ensure that qualification requirements are pre-established, objective, transparent and publicly available. Qualification requirements, including examinations, shall be relevant to the activities to which they apply.
2. Each Member shall ensure that qualification requirements are not adopted or applied with a view to creating obstacles to trade in services and shall be based on objective criteria, such as competence and the ability to supply the service.
3. Members note the role which autonomous and mutual recognition can play in facilitating the process of verification of qualifications and/or in establishing equivalency of education, experience or examination requirements. Where possible, autonomous recognition shall be accorded to qualifications where they are found to be equivalent to those required for the supply of a service.
4. Each Member shall ensure that mechanisms with adequate procedures exist for the verification and assessment of qualifications held by services suppliers including those of any other

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<sup>7</sup> Licensing fees refer to fees charged specifically for the administrative activities related to licensing. These do not include payments for auction, tendering or other non-discriminatory means of disposing concessions, or mandated contributions to universal service provision.

Members. Such mechanisms shall be based on criteria that are pre-established, objective and apply to both local and non-local qualifications.

5. Each Member shall ensure that, in verifying and assessing qualifications, the competent authority identifies any deficiency in an applicant's qualifications. The applicant shall be advised of any additional qualification requirements to meet the deficiency. Such additional qualification requirements shall be based on objective means such as course work, examinations, training and work experience. Each Member shall provide the opportunity to service suppliers to fulfil such additional requirements in the home country, host country or third country, wherever possible. Each Member shall provide justification in case such additional requirements can be met only in the host country.

6. Where qualifications have been recognized as equivalent to those required for the supply of the service or the service supplier has met the identified additional requirements, each Member shall allow the service supplier to supply the service, subject to any applicable registration requirements.

7. Each Member shall ensure that, in verifying and assessing qualifications, the competent authority gives positive consideration to professional experience of the applicant as a substitute or complement to academic qualifications, and also to the membership of the applicant in the relevant professional associations in the home country or a third country.

8. Each Member shall ensure that any requirements of language skills for supplying a service are based on specific needs of supplying the service in general. Each Member shall ensure that, in respect of language used for conducting competency assessment including examinations, consideration is given to facilitating foreign applicants in general in taking part, subject to resource constraints and practical feasibility.

## **I. QUALIFICATION PROCEDURES**

1. Each Member shall ensure that qualification procedures are pre-established, objective, transparent and publicly available.

### **2. [Proposal i]**

In the application of qualification procedures, Members shall ensure that qualification procedures and related documentation should not in and of themselves unduly impede the applicants' fulfilment of qualification requirements; and that the format required for such documentation be reasonable.

### **[Proposal ii]**

Each Member shall ensure that qualification procedures and related documentation requirements are not more burdensome than necessary to ensure that applicants meet the qualification requirements and are not in themselves a restriction on the supply of service.<sup>8</sup>

3. Examinations<sup>9</sup> required as part of the application process for a license, qualification or equivalent form of permission are to be offered on a non-discriminatory basis at reasonable intervals and not at a cost designed to limit the number of applications.

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<sup>8</sup> Many delegations have made no proposals on the concept of necessity and have expressed their opposition to its inclusion in the disciplines.

<sup>9</sup> This paragraph shall not apply to qualifying examinations administered or offered by financial service regulators or self-regulatory bodies or organizations, such as clearing agencies, or securities or futures

4. Each Member shall ensure that examinations are administered on subjects relevant to the activity subject to the applicable qualification requirements. Residency requirements not subject to scheduling under Article XVII of the GATS shall not be a pre-requisite for taking part in competency assessment including examinations. Work experience in the host country shall also not be considered a pre-requisite unless necessary for meeting national policy objectives.<sup>10</sup>
5. Each Member shall ensure that examinations, if required, are scheduled at reasonably frequent intervals, and are open for all eligible applicants, including foreign and foreign qualified applicants. Applicants shall be allowed a reasonable period for the submission of applications.
6. Each Member shall ensure that the competent authority considers means to facilitate foreign applicants in taking part in such examinations, wherever feasible having regard to the costs and administrative burden involved, including conducting examinations by electronic means or conducting examinations abroad.
7. The qualification procedures should be as simple as possible, and applicants should be required to approach only one competent authority for qualification procedures as far as practicable.
8. Each Member shall ensure that the documentation requirements including requirements on format are reasonable and relevant to the activities to which the qualification requirements apply. The documentation deficiency of any incomplete application shall be identified and the applicant shall be allowed the opportunity to redress the deficiency.
9. Application under the qualifications procedures shall, where feasible, be possible at any time, and receipt of applications shall be acknowledged. Each Member shall ensure that processing by the competent authority under the qualification procedures, including verification and assessment of a qualification after receiving a complete application, is completed within a reasonable timeframe. In particular, each Member shall endeavour to establish and publicise the normal processing timeframe under the qualification procedures. Where additional qualification requirements have been identified, reasonable timeframe shall be allowed for the applicant to meet such additional qualification requirements.
10. Each Member shall ensure that any fees charged for qualification procedures have regard to the administrative costs involved and do not in themselves represent an impediment to engaging in the relevant activity. This shall not preclude the recovery of any additional costs of administering qualification requirements and any other administrative activities related to the regulation of the relevant services.
11. Each Member shall ensure that if an application for verification and assessment of qualification is rejected by the competent authority, the applicant shall be informed in writing and without delay. An unsuccessful applicant shall be informed upon request of the reasons for rejection of the application, as appropriate, and of the possibility and timeframe for an appeal against the decision. An applicant shall be permitted, within reasonable limits, to resubmit the application.
12. Applicants should be provided opportunity to supplement their application in case of incomplete application identified by the relevant authority and they should be permitted to submit a new one that addresses the reason for denial of the previous one.

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exchanges or markets, as part of the application process for licenses or applications relating to financial service suppliers.

<sup>10</sup> Many delegations have made no proposals on the concept of necessity and have expressed their opposition to its inclusion in the disciplines.

## **J. TECHNICAL STANDARDS**

1. Members shall ensure that technical standards are pre-established, publicly available and objective.
2. Members shall in reasonable time publish a notice in a publication, print or electronic, and notify other Members through the Secretariat, of the establishment and application of measures relating to national or international technical standards relating to services and service providers.
3. As a matter of good practice, Members involved in the development and application of measures relating to plurilateral standards, and standards developed and applied by non-governmental standardisation bodies should ensure maximum transparency of relevant processes for the benefit of other Members.
4. Members shall ensure that technical standards are not prepared, adopted or applied with a view to creating unnecessary obstacles to trade and shall not be maintained if the circumstances of objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a less trade restrictive manner. Requirements should be based on objective and transparent criteria.<sup>11</sup>
5. Where technical standards are required and relevant international standards exist or their completion is imminent, Members shall draw on them or the relevant parts of them as a basis for their technical standards, except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate national policy objective pursued.

## **K. DEVELOPMENT**

1. Members shall take into account the special development, financial and trade needs of developing Members in the implementation of these disciplines.
2. While fees charged by the competent authority should not be an impediment in themselves to practising the relevant activity, developing country Members are not precluded from charging fees utilised to meet national policy objectives.
3. A concessionary fee for licensing or qualification procedures may be considered for applicants from developing Members.
4. Where circumstances allow scope for the phased introduction on new qualification requirements and procedures, licensing requirements and procedures and technical standards, longer time-frames for compliance with regulatory measures may be accorded to services and services suppliers of developing countries so as to maintain opportunities for their exports.
5. Members shall, in the preparation and application of measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards, take account of the special development, financial and trade needs of developing country Members, with a view to ensuring that such measures do not create unnecessary obstacles to exports from developing countries.<sup>12</sup>

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<sup>11</sup> Many delegations have made no proposals on the concept of necessity and have expressed their opposition to its inclusion in the disciplines.

<sup>12</sup> *Ibid.*

6. Members shall ensure that licensing procedures applied by a competent authority are of minimal complexity and entail minimal costs for meeting requirements and fulfilling procedures for entry into export markets. Members may grant reduced licensing and other related fees to service providers from developing country Members.

7. Members shall provide developing Members and in particular least-developed country Members, upon their request, technical assistance on mutually agreed terms and conditions. Technical assistance shall be aimed, *inter alia* at:

- (a) strengthening institutional and regulatory capacities to regulate the supply of specific services and to implement these disciplines;
- (b) assisting developing country and in particular LDCs service suppliers to meet the relevant requirements and procedures in export markets;
- (c) facilitating the establishment of technical standards and participation of developing countries and in particular least-developed country Members facing resource constraint in the relevant international organizations.

8. Developed country Members, and developing country Members declaring themselves in a position to do so, shall provide, through public or private bodies, assistance to developing country Members for purposes of assisting their service providers in building their supply capacity and in complying with domestic regulation in their export markets. Such assistance may also be provided directly to the respective service providers. If the relevant export market is the market of the Member from whom such assistance is requested, this Member shall use its best endeavours to provide the required assistance.

9. The extent and the timing of least-developed country Members' obligations to comply with these disciplines should be related to the implementation capacity of individual least-developed country Members.

## **L. INSTITUTIONAL PROVISIONS**

1. The Council for Trade in Services shall establish a Committee on Domestic Regulation to oversee the implementation of these disciplines and the operation of Article VI of the GATS including any further work under Article VI:4 of the GATS<sup>13</sup>.

2. The Council for Trade in Services shall review regularly the operation of these disciplines, including the special and differential treatment provisions, and make recommendations as appropriate for any necessary modifications or additions to these disciplines. The first review shall be conducted no later than five years after the date of entry into force of these disciplines.

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<sup>13</sup> This includes any tasks assigned to the Working Party on Professional Services in the Decision on Professional Services (S/L/3) and Decision on Disciplines Relating to the Accountancy Sector (S/L/63) and the Working Party on Domestic Regulations in the Decision on Domestic Regulations (S/L/70).