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Working Party on Domestic Regulation**REPORT OF THE CHAIRMAN OF THE WORKING PARTY ON DOMESTIC
REGULATION TO THE SPECIAL SESSION OF THE COUNCIL FOR TRADE IN
SERVICES**

1. In keeping with the regular reporting requirements of Chairpersons of subsidiary bodies to the Special Session of the Council for Trade in Services, I am submitting this report under my responsibility as Chairman of the Working Party on Domestic Regulation. This particular report is being made in the context of paragraph (g) of Annex C to the Decision Adopted by the General Council on 1 August 2004 ("July Package"), which, for the purpose of the Sixth Ministerial meeting, mandates the Special Session of the Council for Trade in Services to review progress in the negotiations and to provide a full report to the Trade Negotiations Committee, including possible recommendations.

I. STATUS OF WORK

2. Since the Fifth Ministerial Conference, the Working Party on Domestic Regulation intensified its work on the development of regulatory disciplines pursuant to Article VI:4 of the GATS. Good momentum was generated by the submission of numerous proposals by Members relating to the various aspects of possible domestic regulation disciplines. Members also continued the discussion of examples of regulatory measures. On the basis of the discussions in the Working Party, I have gathered that Members would like to have disciplines on domestic regulation that help their services exports and exporters. Members have also indicated that there is a need for domestic coordination between trade ministries and regulating agencies, so that the eventual disciplines do not overly impinge on regulatory autonomy and are in keeping with the objectives of the GATS. In the course of my consultations with Members, including groups of developing country Members, continuous reference was made to the Preamble of the GATS, in particular Members' right to regulate.

3. Proposal-by-proposal discussions in the Working Party on the development of regulatory disciplines pursuant to Article VI:4 were followed in the second half of 2005 by three rounds of informal discussions in which Members addressed elements raised in their proposals on a thematic basis. The themes agreed for these rounds of discussions were: Licensing Requirements; Licensing Procedures; Qualification Requirements; Qualification Procedures; Technical Standards; Transparency; Objectives; Scope; Application; Definitions; and Development Considerations (including S&D and Technical Assistance) with regards to the above items. The sequence in which the items appeared did not reflect any order of priority and was without prejudice to individual positions of Members. Members raised a number of substantive issues and concepts in the thematic discussions. Members' proposals and the issues and concepts raised in the thematic discussions provide useful resource for the future work of the WPDR.

4. In the past weeks, I have also had broad consultations on the text on domestic regulation for the Ministerial Declaration and, pursuant to a request from a group of Members and inputs received, on an illustrative list of possible elements for Article VI:4 disciplines.

5. I have encouraged Members to keep up momentum in the negotiations by submitting new proposals and revising existing ones on the basis of the comments received by other Members. Certain Members have indicated to me that they are planning to submit new or revised proposals. I encouraged Members revising existing proposals or submitting new ones to frame the issues and concepts that they raise in more specific language. This would help to facilitate Members' domestic consultations and focus the WPDR's work.

6. While the Sixth Ministerial Conference is not a point of conclusion for the negotiations under Article VI:4 of the GATS, it nevertheless represents an important juncture in the work of the WPDR. Clearly much work lies ahead in 2006. The Working Party should make use of all the limited time available in an efficient manner. In other words, we should hit the ground running when we reconvene early next year. In this connection, I will soon be undertaking consultations on how to organize the WPDR's work in the coming year.

II. RECOMMENDATIONS TO THE CHAIRMAN OF THE SPECIAL SESSION OF THE COUNCIL FOR TRADE IN SERVICES

7. In discussing the input of the Working Party to the Sixth Ministerial Conference, Members emphasized the need for Ministers to take stock of the negotiations under Article VI:4 of the GATS and provide impetus for concluding such negotiations by the end of this round.

8. As Members would recall, on 25 October 2005 I circulated, at Members' request, the following documents under my responsibility as Chairman of the Working Party:

- a proposed draft text on domestic regulation for the Sixth Ministerial Conference;
- an illustrative list of possible elements for Article VI:4 disciplines.

9. At the informal meeting held on 26 October 2005, the Working Party held a first round of discussions on these two documents. I provided an update on my consultations on these documents at the WPDR meeting held on 28 October 2005. On the basis of Members' inputs and my broad consultations, including the WPDR meeting of 2 November 2005, I am submitting my recommended text on domestic regulation (see JOB(05)/279) and the illustrative list of possible elements for Article VI:4 disciplines (see Attachment I). These documents are circulated under my responsibility. However, taking into account Members' inputs and my consultations, I have made an effort to ensure that both revised texts broadly reflect Members' interests and concerns.

10. In the past weeks, delegations have worked hard with a constructive spirit and in a problem solving mode to bridge gaps on the ministerial text and on the illustrative list of possible elements for Article VI:4 disciplines. I recognize that in doing so many delegations have shown flexibility and made concessions.

ATTACHMENT I

Illustrative List of Possible Elements for Article VI:4 Disciplines

INTRODUCTION

The following is an illustrative list of possible elements for any necessary disciplines under Article VI:4 of the GATS. It has been compiled on the basis of proposals¹ presented and comments thereon by Members in the Working Party on Domestic Regulation. While this list reflects interests and concerns discussed by Members, there is no presumption that consensus has been reached on its elements. It does not prejudice the outcome of the negotiations under Article VI:4 of the GATS, neither in substance nor form. Further work on these elements will be pursued on the basis of current and future proposals by Members without prejudice to the position of any Member or their proposals regarding any of the elements. This list is without prejudice to Members working on the basis of Members' proposals.

LICENSING REQUIREMENTS AND PROCEDURES

Transparency: including services subject to licensing, licensing criteria, application procedures, documentation requirements, timeframes, appeal/review procedures, etc.; building on existing principles and disciplines in Articles III and VI; pre-establishment, public availability and objectivity; accessibility by service suppliers.

Requirements:

- Relevance of licensing requirements to the activities for which authorization is sought.
- Residency requirements not subject to scheduling under Article XVII of the GATS.

Administration of licensing procedures: neutrality, reasonableness, objectiveness and impartiality.

Procedures and related documentation: burdensomeness or reasonableness; relevance of documentation requirements; format of documentation; identification of deficiencies.

Review/appeal: availability; reasons for rejection; information on deficiencies; possibility of re-submission in case of deficiencies and incomplete information.

Timeframes: reasonableness; including submission, re-submission, renewal, decision, review/appeal, and entry into effect of license.

Fees: for licensing procedures; reasonableness, reflection of administrative costs, concessionary fees for applicants from developing countries, and treatment of auction or tendering.

QUALIFICATIONS REQUIREMENTS AND PROCEDURES

Transparency: including criteria of qualification requirements, administrative or procedural rules relating to administration of qualifications requirements, appeal/review procedures, etc.; pre-establishment, public availability, and objectivity; accessibility by service suppliers.

¹ See Attachment II.

Requirements:

- Relevance of qualification requirements and scope of examinations to the activities for which authorization is sought.
- Language requirements: linkage to service requirements or legitimate objectives including quality of service and protection of consumers.
- Residency requirements not subject to scheduling under Article XVII of the GATS: relevance as pre-requisite for eligibility for examinations.

Specification, assessment and verification of qualifications, including educational qualifications and professional competence:

- Availability of pre-established mechanisms for verifying foreign qualifications including examinations.
- Specification relating to education, course work, examinations, training, work experience.
- Identification of additional requirements relating to education, training or work experience in case of deficiencies.
- Possibility of meeting deficiencies through course work, training or work experience and where possible in home country.

Examinations: relevance; reasonableness of frequency; eligibility and accessibility; facilitating participation of foreign service providers; residency requirements.

Procedures and related documentation: burdensomeness or reasonableness; relevance of documentation requirements.

Review/appeal: availability; including non-acceptance of qualifications; possibility of re-submission in case of deficiencies and incomplete information.

Timeframes: reasonableness; including verification of qualifications, examinations, submission and re-submission of applications.

Fees: for examinations and other qualification procedures; reasonableness; reflection of administrative costs; concessionary fees for applicants from developing countries.

Mutual recognition agreements.

TECHNICAL STANDARDS

Transparency: including services subject to technical standards and information on technical standards, etc.; pre-establishment, public availability, and objectivity; opportunity for comments and taking the results into account; review of necessity.

Conformity assessments: application of regulatory control on compliance with the standard.

International and national technical standards: use of relevant international standards and deviation from such international standards; presumption of consistency with disciplines if in compliance with relevant international standards.

International professional bodies: recognition of role in establishment and promotion of best practices.

Technical standards for Mode 1: principle of equivalency.

REGULATORY TRANSPARENCY (INCLUDING TRANSPARENCY ELEMENTS NOTED ABOVE)

Mechanisms to respond to inquiries: concerning Article VI:4 elements, to interested persons.

Publication: concerning Article VI:4 elements; public availability to interested persons; requirements to obtain maintain or renew licenses/certificates, etc.; application processing deadlines; rights of appeal; notification of violation of terms of license.

Notice and comment: advance publication of regulations governing Article VI:4 elements; opportunity for comment; clarity/plainness of language in publication; response to substantive comments; reasonableness of duration between publication and entry into effect.

Transparency in licensing application procedures: establishment, clarity and public availability of procedures concerning Article VI:4 elements; information about requirements/documentation; timeframe for decisions; notification of application status; notification of reasons for denial; non-discriminatory basis of qualifying examinations, frequency of examinations and cost of applications.

OBJECTIVES, SCOPE AND APPLICATION

General considerations

- Objectives of Article VI:4 disciplines.
- Right to regulate in line with the GATS, specifically the right of regulators to regulate and to introduce new regulations to meet national policy objectives.
- Scope and application of Article VI:4 disciplines and relationship with existing GATS provisions, specifically Article VI:4 disciplines non-overlapping with the scope of Articles XVI/XVII and consistency with the GATS and its Annexes.

DEFINITIONS

Definitions for qualification requirements, qualification procedures, licensing requirements, licensing procedures, and technical standards.

DEVELOPMENT CONSIDERATIONS

Compliance: compliance taking account of degree of development of regulations, institutional regulatory capacity, need to regulate and introduce new regulation to meet national policy objectives, and the level of development of individual developing Members. Compliance on best-endeavor basis for LDCs.

Implementation: implementation taking account of needs of developing country Members differential implementation including differential timeframe for compliance.

Technical assistance and capacity building: technical assistance and capacity building, including for building institutional capacity, and strengthening ability for compliance.

Recognition of the needs and regulatory capacities of developing and least developed countries, and facilitation of their services exports.

ATTACHMENT II²

Proposals tabled to date by Members on regulatory disciplines pursuant to Article VI:4 of the GATS

Communication from Japan, *Draft Annex on Domestic Regulation*, JOB(03)/45/Rev.1, 2 May 2003.

Communication from the European Community and Its Member States, *Proposal for Disciplines on Licensing Procedures*, S/WPDR/W/25, 10 July 2003.

Communication from Colombia, *Examples of Measures Relating to Administrative Procedures for Obtaining Visas or Entry Permits*, S/WPDR/W/29, 7 July 2004.

Communication from Mexico, *Mexico's Experience of Disciplines on Technical Standards and Regulations in Services*, S/WPDR/W/30, 24 September 2004.

Communication from Bolivia, Chile, India, Mexico, Pakistan and Thailand, *Proposed Elements for Disciplines on Qualification Requirements and Procedures*, JOB(05)/50, 30 March 2005.

Communication from Brazil, Colombia, Dominican Republic, Peru and the Philippines, *Elements for Draft Disciplines on Domestic Regulation*, 26 April 2005 (revised room document).

Communication from Chile; Hong Kong, China; Korea; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; and Thailand, *Application of Regulatory Disciplines to Different Levels of Governments and Non-Governmental Bodies*, 27 April 2005 (room document).

Transparency Disciplines in Domestic Regulation, Proposal by the United States, 2 May 2005 (revised room document).

Communication from Australia, *Development of Disciplines on Domestic Regulation for the Legal and Engineering Sectors*, S/WPDR/W/34, 6 September 2005.

Communication from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, *Transparency Disciplines on Domestic Regulation in the Telecommunications Sector*, S/WPDR/W/36, 14 September 2005.

Communication from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, *Definitions of Qualification Requirements, Qualification Procedures, Licensing Requirements, Licensing Procedures and Technical Standards*, S/WPDR/W/37, 6 October 2005.

Communication from Switzerland and Mexico, *Proposal for Disciplines on Technical Standards in Services*, S/WPDR/W/32/Rev.1, 27 October 2005.

² These proposals have been listed at the request of Members. This list would be updated with new proposals and/or revisions to existing proposals.