

Working Party on Domestic Regulation

COMMUNICATION FROM CHILE; HONG KONG, CHINA; THE SEPARATE CUSTOMS TERRITORY OF TAIWAN; PENGHU, KINMEN AND MATSU [...]

Article VI:4 Disciplines – Proposal for Draft Text

The following communication, dated 9 June 2006, from the delegations of the Chile; Hong Kong, China; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu [*further co-sponsors to be confirmed*] is being circulated to the Members of the Working Party on Domestic Regulation.

1. Paragraph 5 of Annex C of the Hong Kong Ministerial Declaration states that "Members shall develop disciplines on domestic regulation pursuant to the mandate under Article VI:4 of the GATS before the end of the current round of negotiations. We call upon Members to develop text for adoption. In so doing, Members shall consider proposals and the illustrative list of possible elements for Article VI:4 disciplines¹".

2. Having regard to the indicative "road-map" circulated by the Chair of WPDR in JOB(06)/28 and with a view to providing specific text as inputs for the Chair to present a draft consolidated text as early as possible, the co-sponsors would like to present the attached proposal for draft text for a set of disciplines under Article VI:4.

3. The proposed draft text aims to present a comprehensive text encompassing possible common elements of disciplines. The draft text takes into account all existing proposals for Article VI:4 disciplines and Members' discussions thereon, draws upon the illustrative list of possible elements for Article VI:4 disciplines, and has regard to the accountancy disciplines (S/L/64).

4. This paper is presented without prejudice to the final position of its co-sponsors in the on-going negotiations under Article VI:4 and on any others proposals supported by any of its co-sponsors. The co-sponsors reserve the right to revise this paper in the light of further discussions.

¹ As attached to the Report of the Chairman of the Working Party on Domestic Regulations to the Special Session of the Council for Trade in Services on 15 November 2005, contained in document JOB(05)/280.

Proposed Draft Text for Article VI:4 Disciplines

{Note: Text in italics and curly brackets are annotations only and not part of the draft text.}

I. Principles and Objectives

1. This Annex sets out disciplines on domestic regulations developed in accordance with Article VI:4 of the GATS.

{Principles of right to regulate}

2. The GATS recognizes the right of Members to regulate, and to introduce 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 Members, the particular need of developing Members to exercise this right. These disciplines shall not be construed to prevent a Member from exercising this right, including 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. These disciplines also shall not be construed to prescribe or impose any particular regulatory approaches or any particular regulatory provisions in domestic regulations.

{Objectives of VI:4 disciplines}

3. The purpose of these disciplines is to facilitate trade in services by ensuring that measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards do not constitute unnecessary barriers to trade in services. In applying these disciplines, Members shall have regard to the objectives of Article VI:4 of the GATS. In this regard, these disciplines aim to ensure that such measures are –

- (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; and
- (c) in the case of licensing and qualification procedures, not in themselves a restriction on the supply of the service.

II. Scope and Application

{Scope of application}

4. These disciplines apply to all measures by Members *{“measures by Members” as defined in Art.I:3(a)}* relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards and affecting trade in services for which the Member has entered specific commitments in its schedule. Specifically, these disciplines apply to such measures taken by central, regional or local governments and authorities, and non-government bodies in the exercise of powers delegated by central, regional or local governments or authorities.

{Relationship with existing GATS provisions}

5. These disciplines do not apply to limitations subject to scheduling under Article XVI and XVII, but apply to measures administering such limitations and relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards.

6. Nothing in these disciplines derogates from the provisions of Article III*bis*, Article XII, Article XIV, Article XIV*bis*, the Annex on Movement of Natural Persons, and paragraph 2(a) of the Annex of Financial Services of the GATS.

{Relationship with Mode 4 measures}

7. These disciplines apply to measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards that are applied as part of or in conjunction with measures regulating the entry of natural persons into, or their temporary stay in, a Member's territory, to the extent that the GATS applies to such measures in accordance with the Annex on Movement of Natural Persons.

III. Definitions

8. For the purpose of these disciplines -

- (a) **"qualification requirements"** refer to substantive requirements relating to the competence of service suppliers to supply a service that a service supplier is required to demonstrate prior to obtaining authorization to supply a service.
- (b) **"qualification procedures"** refer to administrative procedures relating to the administration of qualification requirements for the supply of a service.
- (c) **"licensing requirements"** refer to substantive requirements, other than qualification requirements and technical standards, which a service supplier is required to fulfil or comply with in order to obtain authorization to supply a service.
- (d) **"licensing procedures"** refer to administrative procedures relating to the administration of licensing requirements for the supply of a service, including those relating to monitoring, compliance and enforcement.
- (e) **"technical standards"** refer to substantive requirements that prescribe the characteristic of a service or the manner in which it is supplied. Measures relating to technical standards include the procedures relating to application, monitoring, compliance and enforcement of such standards.
- (f) **"authorization to supply a service"** includes any authorization, certification, licence, permit, or any other form of permission or approval, implicit or explicit, specifically required for the supply of a service. It does not include laws and regulations which relevant persons are generally required to comply with and which are not specifically required for the supply of a service.
- (g) **"competent authorities"** refer to any central, regional or local governments and authorities, and non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities, which are responsible for formulating, introducing, implementing, administering or applying measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards for the supply of a service.

IV. General Provisions and Transparency

{Formulation and application of measures}

9. Members 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.

{Transparency}

10. Each Member shall ensure that measures of general application relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards are pre-established, objective, transparent and publicly available. Such measures may be 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 interested persons including those of other Members to have access.

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

12. 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 –

- (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 the content and procedures of such;
- (e) any applicable technical standards;
- (f) the normal timeframe for processing of an application;
- (g) any channel for appeal or review of an application; and
- (h) any monitoring, compliance or enforcement procedures including notification procedures for non-compliance.

{Opportunities for comments}

13. Each Member shall ensure that, to the extent practicable, 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.

{International standards}

14. Members recognize the role of international standards in facilitating trade in services, and are encouraged to consider following international standards of relevant international organizations² in respect of measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards. In determining whether the measure of a Member is in conformity with the obligations under these disciplines, account shall be taken of international standards of relevant international organizations which that Member chooses to apply.

² 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.

V. Licensing Requirements

{Objective, transparent and relevant requirements}

15. Each Member shall ensure that licensing requirements are based on objective and transparent criteria and are relevant to the activities to which the licensing requirements apply.

{Residency requirements}

16. 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.

VI. Licensing Procedures

{Procedures and related documentations}

17. 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. The licensing procedures should be as simple as possible, and applicants should be required to approach only one competent authority for licensing procedures as far as practicable.

18. 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. The documentation deficiency of any incomplete application shall be identified and the applicant shall be allowed the opportunity to redress the deficiency.

{Reason for rejection, review/appeal and re-submission}

19. Each Member shall ensure that, if a licensing application is rejected by the competent authorities, the applicant is informed of –

- (a) the reasons for rejection, either directly or on request as appropriate;
- (b) the opportunity and timeframe for review of or appeal against the decision by the competent authorities; and
- (c) the opportunity and timeframe for re-submission of application.

{Timeframe}

20. Application for licensing shall, where feasible, be possible at any time, and receipt of applications shall be acknowledged. Each Member shall ensure that processing by the competent authorities under the 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. A license, once granted, shall enter into effect as soon as possible.

{Fees}

21. Each Member shall ensure that any licensing fees³ have regard to the administrative costs involved. 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.

VII. Qualifications Requirements

{Objective, transparent and relevant requirements}

³ 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.

22. Each Member shall ensure that qualification requirements, including the scope of any associated competency assessment such as examinations, are based on objective and transparent criteria and are relevant to the activities to which the qualification requirements apply.

{Verification and assessment of qualifications}

23. Where qualification requirements are applied to the supply of a service, each Member shall ensure that mechanisms exist for the verification and assessment of qualifications held by services suppliers including those of any other Members. Such mechanisms shall be based on criteria that are pre-established and objective and apply to both local and non-local qualifications.

24. Each Member shall ensure that, in verifying and assessing qualifications, the competent authorities identify any shortfall in an applicant's qualifications. To the extent practicable, the applicant shall be advised of any additional qualification requirements to meet the shortfall. Such additional qualification requirements shall be based on objective requirements such as course work, examinations, training and work experience. Fulfilment of such additional qualification requirements in the home country or a third country should be possible in principle.

25. Each Member shall ensure that, if any qualification requirements not subject to scheduling under Article XVII of the GATS can only be fulfilled in the host country, the applicants are informed of that and of how they could avail themselves of the opportunity to fulfil such requirements.

26. Each Member shall ensure that, in verifying and assessing qualifications, the competent authorities take into account professional experience of the applicant as complement to academic qualifications, and also take into account the membership of the applicant in the relevant professional associations in the home country or a third country.

{Language requirements}

27. Each Member shall ensure that any requirements of language skills for supplying a service are based on genuine needs of supplying the service in general.

28. 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.

{Residency requirements}

29. Where residency requirements not subject to scheduling under Article XVII of the GATS apply in qualification requirements, each Member shall consider whether less trade restrictive means could be employed to achieve the purposes for which these requirements were established. 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.

{Recognition}

30. Members recognize 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.

VIII. Qualifications Procedures

{Procedures and related documentations}

31. 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. 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.

32. 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.

{Reason for rejection, review/appeal and re-submission}

33. Each Member shall ensure that, if an application for verification and assessment of qualification is rejected by the competent authorities, the applicant is informed of –

- (a) the reasons for rejection, either directly or on request as appropriate;
- (b) the opportunity and timeframe for review of or appeal against the decision by the competent authorities; and
- (c) the opportunity and timeframe for re-submission of application.

{Timeframe}

34. 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 authorities 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.

35. Each Member shall ensure that examinations, if required, are scheduled at reasonably frequent intervals, and are open for all eligible applicants both local and foreign. Applicants shall be allowed a reasonable period for the submission of applications for examinations. Each Member shall ensure that the competent authorities consider 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.

{Fees}

36. Each Member shall ensure that any fees charged for qualification procedures have regard to the administrative costs involved. 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.

IX. Technical Standards

{Preparation and adoption of standards}

37. Each Member shall ensure that technical standards are not prepared or adopted with a view to creating unnecessary obstacles to trade in services. For this purpose, Members shall ensure that such standards are based on objective and transparency criteria and are relevant to meet specific national policy objectives.

{Application, monitoring, compliance and enforcement of standards}

38. Each Member shall ensure that any measures relating to application, monitoring, compliance and enforcement of technical standards are not more burdensome than necessary to ensure that a service conforms with the relevant technical standards, taking into account the risks that non-fulfilment would create.

{Review of standards}

39. Each member shall ensure that technical standards are reviewed from time to time as to whether the circumstances or objectives giving rise to their adoption still exist or if the changed circumstances or objectives can be addressed in a less trade-restrictive manner.

X. Development Considerations and Technical Assistance

{Consideration of developing Members' needs}

40. Members shall take into account the special development, financial and trade needs of developing Members in the implementation of these disciplines.

{Compliance by developing Members}

41. In general, developing Members shall be allowed longer timeframes for compliance with these disciplines, having regard to the degree of development of services regulations and the institutional and regulatory capacity of individual developing Members.

{LDCs}

42. Least-developed Members are encouraged to take into account these disciplines when regulating their services, but shall not be subject to dispute settlement on these disciplines for a period of __ years after these disciplines enter into force. This period shall be subject to review and may be extended as necessary.

{Consideration of developing Members' export}

43. 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.

{Concessionary fees}

44. A concessionary fee for licensing or qualification procedures may be considered for applicants from developing Members.

{TA for institutional/regulatory capacity building}

45. Members shall provide developing Members and in particular least-developed Members, upon their request, technical assistance on mutually agreed terms and conditions with a view to strengthening their institutional and regulatory capacities to regulate the supply of specific services and to implement these disciplines.

{TA for service capacity building}

46. Members shall provide developing Members and in particular least-developed Members, upon their request, technical assistance on mutually agreed terms and conditions with a view to enhancing their domestic capacity in specific services and ability of their services suppliers to avail themselves of the facilitation these disciplines provide in export markets of their interests.

{TA for participation in international standards}

47. Members shall take such reasonable measures as may be available to them to ensure that relevant international organizations⁴ and standard-setting by such organizations are organized and operated in a way which facilitates active and representative participation of relevant bodies in all Members, taking into account the special problems of developing Members.

⁴ 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.

XI. Institutional Arrangements and Review

48. The Council for Trade in Services shall establish a Committee on Domestic Regulations 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 GATS⁵.

49. 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.

⁵ 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).