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Working Party on Domestic Regulation

EXAMPLES OF MEASURES TO ADDRESSED BY DISCIPLINES UNDER GATS ARTICLE VI:4

Informal Note by the Secretariat

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ANNEX I - EXAMPLES CONTRIBUTED BY MEMBERS

A These examples appear to meet the requirements set by Members, i.e. specific measures not already found in the accountancy disciplines, which are also not XVI/XVII measures:

Transparency

- Lack of opportunity for interested non-governmental market participants to meet with government officials to discuss the impact of new or proposed regulations.
- Inadequate information available, or information not readily available, to non-governmental market participants about new or proposed regulations affecting their interests.

Licensing requirements

- [Subject to Members' interpretation.] Restrictive regulations relating to zoning and operating hours, to protect small stores.
- Federal and sub-federal licensing and qualification requirements and procedures are different, making a license or qualification recognition obtained in one state not valid in other states.
- Too many licenses required in order to operate a business.
- Overly burdensome licensing requirements (e.g. minimum age required for a physiotherapist 25 years old).
- Branches of a foreign company are required to regularly submit plan of activities to the government authority in order to be eligible to renew registration.
- Lengthy censorship procedures; too many censoring agencies with different criteria.

Licensing procedures

- It is necessary to obtain/renew the same license in every regional government.
- All the important papers necessary to establish business operation have to be certified by the Public Notary which can take a long time to process with no other alternative available.
- The effective period of licensing is very short.
- Authorization may not be handled through a single point.
- Inability of applicants to file complaints regarding review of their applications.

Qualification requirements

- Only persons who have specific certification from a government agency can take up managerial posts (e.g. managers of an insurance company must have certification from the insurance agency in that country).
- Requirement for fluency in language of the host country which in some cases not relevant to ensure the quality of service.
- Different sub-federal regulations for recognition of qualifications.
- Minimum requirements for local hiring (accountancy).
- Qualification procedures
- A large number of documents is required (application procedures).
- Need for in-country experience before sitting examinations (accountancy).

Technical Standards

- Unreasonable environmental and safety standards (maritime transport).

B. The following measures also appear to meet the requirements set by Members - provided they apply to sectors other than accountancy (otherwise they are already covered by the accountancy disciplines):

Transparency

- Regulatory changes without adequate prior notice, making the applicants not eligible to apply or have to find new supporting documents within a short period of time.
- Non-transparent regulatory environment (architecture, postal and courier, audiovisual, distribution, education, energy, environmental, sporting, and tourism services).
- Domestic laws and regulations are unclear and administered in an unfair manner; subsidies for higher and adult education, and training are not made known in a clear and transparent manner.
- A lack of transparency in domestic town planning regulations, that might prejudice decisions on the location of installations to provide such services through commercial presence (distribution services).
- Long delays when government approval is required, and, if approval is denied, no reasons or information given on what must be done to obtain approval in the future (postal and courier services).

Licensing requirements

- Absence of pre-determined, clear criteria for licensing requirements (including postal and courier, and distribution services).
- Unreasonable restrictions on licensing (legal services)
- Restrictive licensing practices (tourism).
- Unclear licensing and approval requirements (energy services).
- Unspecified approval and licensing requirements (environmental, financial, and tourism services).
- Irrelevant requirements to obtain license (e.g. jewellery artists must obtain a permit or license from the National Bank).
- Too many steps for business registration and such registration must be renewed relatively frequently (e.g. every 2 years) at considerable time and expense.
- Non-transparent registration procedures; unpredictable timeframe for registering process.
- Restrictions on registration (e.g. residency requirements), which prevents foreign engineers from signing off on drawings and managing projects.
- Unduly burdensome requirements.
- Onerous licensing requirements (consulting, engineering, construction, and distribution services).
- As licenses can be difficult or impossible to obtain, forwarders often have to resort to intermediaries or form partnerships (Other transport services).
- Registration is required both at the central and local governments (or local commercial courts); the procedures at the local level are often not transparent and taking a long time without adequate explanation for the delay.
- Residency requirements. (including computer, telecommunications, audiovisual, construction, distribution, energy, financial, sporting, and tourism services).
- Residency requirements for advertising production professionals filming in some countries and/or for employees of the advertising firm.
- Mandatory membership of a Chamber of Commerce or a local association required as a pre-condition to operate business in local areas.
- To be licensed as a professional, there is a requirement or pre-requirement to be a member of an affiliate organization. This organization has no regulatory authority over the profession (i.e. union, country club). To be a member of this organization, the licensee must be a resident of the territory or have lived in the territory for the past six months.
- Requirement to have numerous different legal entities as a pre-condition to apply for a business operation license.
- Applicant must possess indemnity insurance or be bonded prior to licensing.
- Licensing fees that are considered as expensive by international standards.
- Registration/approval is required in order to provide services.
- Authorization requirements are cumbersome: e.g. a permit is required for every single project.

Licensing procedures

- Work history and letters of reference from all previous employers unrelated to the authorization sought.
- Documented proof of physical and mental well-being.
- Overly complicated licensing procedures (e.g. have to go through many steps in many agencies in order to obtain a license).
- Excessive, vexatious formalities, lacking in transparency, for professional licensing purposes, etc.
- Only original documents will be accepted.
- Only documents translated or authenticated by that country's Embassy in Bangkok will be accepted, causing unnecessary delays and expenses (especially if additional documents for an application are required at short notice).
- Delays in receiving an application.
- Delays in informing the applicant of the decision (unreasonable time).
- Where government approval is required but denied, no reasons are given for denial, and no information is given on what must be done to gain approval in the future.
- No possibility for the applicant of correcting minor errors in its application form.
- No possibility of resubmitting applications for licensing after a first rejection.
- Delays in implementing the terms of the licence
- Lack of transparency
- The period of time required for the processing of a license application is not very clear.
- The processing period for a license application is long.
- A great deal of documents must be submitted through several stages in order to obtain authorization.
- Excessive application and process fees (including postal and courier, distribution, and educational services).
- Authorization procedures are costly.
- Authorization procedures take up a considerable amount of time.

Qualification requirements

- Residency requirements.
- The scope of examinations of qualification requirements goes beyond subjects relevant to the activities for which authorization is sought.
- Requirements needed for eligibility to take exams are more burdensome than necessary and not relevant to ensure the quality of service (e.g. must stay in that country at least 3 years to be eligible to take exam).
- Qualification requirements other than education, examinations, practical training, experience and language skills.
- Examinations that do not appear to be directly related to the concerned qualifications are required.

Qualification procedures

- Long delays in the verification of an applicant's qualifications acquired in the territory of another Member.
- Lack of a legal framework for accepting professionals with foreign qualifications, or lack of internal consistencies of such a framework.
- Non-recognition of foreign qualifications (including engineering, construction, financial and sporting services).
- Limited or no recognition of foreign qualifications (architecture, legal services).
- Non-recognition of qualifications obtained in country of origin (e.. not accepting cooking certificate from a government institute) and refusal to consider past working experiences and/or apprenticeship in country of origin.
- Common exclusion of developing countries from mutual recognition agreements.
- Unreasonable intervals for examination of applications .
- Limited openness or process (all eligible applicants do not benefit from the same level of openness).
- Unreasonable period of time for the submission of applications.
- Excessive administrative costs that do not reflect fees charged.
- Residency requirements for sitting examinations (not subject to Article XVII).

ANNEX II – EXAMPLES FROM WPPS MATERIALS

A. These examples appear to meet the requirements set by Members, i.e specific measures not already found in the accountancy disciplines, which are also not XVI/XVII measures:

Licensing requirements

- Minimum capital requirements

Licensing procedure

- Applications to more than one licensing authority in any given jurisdiction for a particular service are required.

Technical standards

- [Subject to Members interpretation.] Restrictions on fee-setting, and restrictions/prohibitions on marketing and advertising.
- National standards which diverge from international standards.

B. The following measures also appear to meet the requirements set by Members -- provided they apply to sectors other than accountancy (otherwise they are already covered by the accountancy disciplines):

Licensing requirements

- Restrictions on the use of firm names.
- Residency requirements

Qualification requirements

- Requirements which do not take account of foreign qualifications.
 - Local training requirements exceeding 12 months.
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