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Dear Director General Lamy:

I hope this letter finds you well. You wrote to me earlier this year, taking issue with a Public Citizen document that described how World Trade Organization (WTO) rules promote the sort of financial deregulation to which the current crisis has been attributed and how the WTO Doha Round would require more of it.

I was surprised by your claims that WTO rules do not require financial deregulation. However, I was stunned that you repeated these assertions at the October Global Services Summit in Washington, D.C. sponsored by the Coalition of Service Industries (CSI), the prominent U.S. service sector corporate association. Not only have WTO member countries begun to raise these concerns in formal WTO proceedings, but the United Nations Commission of Experts, chaired by Nobel Prize-winning economist Joseph Stiglitz and comprised of financial experts from around the world, also highlighted the problem in its Report on Reforms of the International Monetary and Financial System: ***“The framework for financial market liberalization under the Financial Services Agreement of the General Agreement on Trade in Services (GATS) under the WTO and, even more, similar provisions in bilateral trade agreements may restrict the ability of governments to change the regulatory structure in ways which support financial stability, economic growth, and the welfare of vulnerable consumers and investors.”***

The crux of the argument in your letter to me and in your CSI presentation is that the WTO does not require deregulation, but only “opening trade.” However, Public Citizen’s main concern and proposals for reform focus on the fact that the current WTO rules conflate liberalization and deregulation. The crisis of the last two years brutally demonstrates the need for banks and other financial service providers to be adequately regulated. Therefore, it is critical that the existing WTO rules that conflict with this goal should be reformed, and that any new negotiating round “do no further harm” – in other words, that it not promote further financial deregulation or impose additional impediments to reregulation.

The existing WTO rules covering financial services pose serious problems. They were written in the late 1980s and early 1990s, at a time when the U.S. and European financial service industries were pushing hard at home and worldwide for deregulation. As a considerable body of literature attests, these corporations advocated for the launch of financial services talks in the Uruguay Round, and then spent years closely involved in the negotiating process, including with respect to the post-

Uruguay Round WTO Financial Services Agreement talks that ended in 1997. It is not surprising that they would ensure that their deregulatory goals were reflected in the final product.

Over 100 countries agreed to “liberalize” financial services under WTO rules, which as a practical matter means they signed up various banking, securities, insurance and other sectors to comply with the GATS “Market Access” rules contained in Article XVI. In doing so, they were *simultaneously* bound to that provision’s deregulation requirements, which include a ban on countries’ maintenance or adoption of any policy based on firms’ size, the types of products a firm may offer, or the specific types of legal entity through which firms may supply a service with respect to bound sectors. Under these Market Access rules, a country that agrees to “liberalize” is simply forbidden from employing these entire categories of regulation, even if such regulations apply to foreign and domestic firms alike. Moreover, the 33 countries that adopted the “Understanding on Commitments in Financial Services” are additionally bound to its “Standstill” provision, which locks in the level of deregulation in place when commitments were made in the late 1990s, at the height of the deregulation craze.

The *proposed* Doha Round terms are potentially far worse. It would seem unimaginable that in the context of the current crisis and worldwide efforts to reregulate financial services, WTO negotiations would now be underway with the explicit goals of establishing ***new, additional limits on domestic regulation***. Yet, this is precisely the goal of the GATS Working Party on Domestic Regulation, which is now finalizing new disciplines limiting regulations in all service sectors bound to GATS. These new constraints on regulation are slated for adoption in the Doha Round, as are new “Accountancy Disciplines” (S/WPPS/W/21) that limit regulation related to that sector. A representative from Arthur Andersen helpfully noted to the *New York Times* that the firm had helped write this latter text. And, while many negotiating texts remain secret, a review of the available “Financial Services Collective Request,” the European Union’s requests, and notes of various GATS meetings demonstrate that outdated demands for more deregulation are indeed part of the Doha Round agenda.

Finally, in your letter and speech, you noted a provision of the GATS Annex on Financial Services relating to prudential measures as support for your claim that nothing in the WTO financial service rules “prevents governments from taking any action to protect the sanctity of the financial system.” Of course WTO signatory governments may implement any policy they want. The problem is that when such measures violate WTO rules, they are subject to challenge before a WTO tribunal. If ruled against, such domestic regulatory measures would have to be eliminated or altered, with the imposition of trade sanctions authorized until a country makes the changes ordered by a WTO tribunal. The clause that you mention does not carve out prudential measures from coverage by the WTO regulatory constraints nor exempt them from challenge before a WTO tribunal. Rather, the provision is a defense that can be raised *after* a country’s prudential financial measure has been challenged as a WTO violation. In your letter, you only quoted the first sentence of that measure. Here is the full text:

“2. *Domestic Regulation*: (a) Notwithstanding any other provisions of the Agreement, a Member shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. **Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Member’s commitments or obligations under the Agreement**” [emphasis added].

The second sentence largely cancels out the seeming defense provided in the sentence you included in your letter. Public Citizen has written a report addressing this provision and related claims, which I attach to this letter. In sum, the provision works to defend financial stability measures *if* such policies do not undermine the commitments and obligations established through the other WTO rules. Yet, if country A had a prudential policy that country B didn't like, B would *only* launch a WTO challenge if its firms were being harmed by the policy, and B thought A's measure did not conform to the provisions of the agreement (i.e. undermining A's obligations and commitments owed to B *under* the agreement). Moreover, our research into the provision's negotiating history shows that other proposals related to prudential financial measures were considered during the 1990s GATS negotiations. Many of these could have provided meaningful safeguards for prudential policies, and did not provide WTO tribunals with the discretion to substitute their judgment for that of governments with respect to the legitimacy of such financial stability measures. But these proposals were rejected in favor of the current measure, with its self-cancelling clauses. I address the other points raised in your original letter to me in more detail in an appendix below.

In closing, allow me to propose a different approach to the WTO financial service deregulation problem that I well understand poses a serious challenge to you as director general. Instead of disputing clear textual evidence, perhaps a better course would be for you to propose to WTO member countries a process to update the *existing* WTO rules so as to eliminate the many deregulatory requirements now binding on countries and provide the needed policy space for countries to reregulate. And, of course until the existing rules are reformed, no new countries or sectors should be bound to them: the push to expand WTO financial service commitments through the Doha Round should be halted. As well, the plans to adopt through the Doha Round *new* WTO disciplines limiting accountancy and other service sector regulation should be dropped. Arguably, establishing additional WTO constraints on non-discriminatory domestic policies was never a good idea, but – in the midst of a historic reregulatory push – it's an unthinkable one.

My limited investigations suggest that many governments would be keen to join you in this reform effort and that you would have the support of many in civil society and academia. I stand ready to assist in any way possible were you to initiate such a review and repair of the WTO's financial deregulation regime.

With my best regards,

Lori Wallach  
Public Citizen's Global Trade Watch division, Director

P.S. Your letter also took issue with a April 8, 2009 Public Citizen press release which exposed the April G-20 Summit Communiqué's misleading projections of Doha Round non-agricultural market access outcomes, which were based on statements you made. I have asked our Research Director to address this matter in a separate letter to you.

## **APPENDIX: Detailed Response to Your Letter on WTO and Financial Service Sector Deregulation**

You wrote: “Opening trade does not equate deregulation. Opening markets merely means that you would allow foreign providers of financial services to operate in your country playing by the same rules as your domestic providers” [emphasis in original].

I couldn’t help but notice that the subject of these sentences was not the “WTO,” or “GATS,” but rather the amorphous notions of “opening trade” and “opening markets.” In a hypothetical context, opening trade and markets would not inherently require deregulation. However, it is the specific WTO rules, not a hypothetical situation, that concerns Public Citizen. The specific terms of the WTO’s provisions covering financial services *do* require deregulation for sectors that over 100 countries bound for liberalization under GATS Market Access rules. Moreover, countries’ non-discriminatory measures that are not among those flatly prohibited under GATS Market Access rules are also subject to review as to whether they meet the criteria set out in GATS Article VI with respect to allowable “Domestic Regulation.” Further, the 33 countries that adopted the “Understanding on Commitments in Financial Services” are subjected to additional, extreme deregulation obligations. The deregulatory requirements of the Understanding are highly relevant given numerous countries are currently under pressure to adopt the Understanding as part of the Doha Round.

### ***The GATS XVI(2) Market Access Rules Simply Forbid Certain Forms of Regulation***

The GATS Market Access rules included in Article XVI(2) forbid certain forms of regulation in the sectors countries agree to liberalize – even if such regulations are nondiscriminatory, and thus would be applied equally to foreign and domestic providers. These prohibitions on broad categories of regulation are expressed in absolute terms with respect to what measures “a Member *shall not maintain or adopt* either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule” [emphasis added].<sup>1</sup> Depending on how a country scheduled its WTO financial service commitments, these rules may apply to all ways in which a service can be provided, including proscribing how governments may regulate foreign banks, insurance and securities firms operating within their territories.

Specifically, five separate categories of non-discriminatory regulation cannot be maintained or introduced in committed financial services sectors (unless specific exceptions were listed in countries’ schedules when the relevant agreements were established in the 1990s). As you know, these include:

- “(a) *limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;*
- (b) *limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;*
- (c) *limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;*
- (d) *limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly*

*related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; [and]*

- *(e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.”*<sup>2</sup>

Indeed, the formal GATS Scheduling Guidelines explicitly instruct signatory nations that, if they seek to preserve their authority for application of such regulatory measures, they must explicitly list exceptions to their Market Access commitments for them, “whether or not such measures are discriminatory.”<sup>3</sup> This admonition reiterates what the actual GATS text unequivocally requires: “opening markets” under WTO rules requires countries to eliminate many non-discriminatory regulations.

These WTO GATS Market Access rules contradict key reregulation proposals.<sup>4</sup> For instance, many economists are calling for caps on the maximum size of financial institutions, or for re-imposition of firewalls between commercial and investment banking. These proposals are not being forwarded by radicals, but rather from former Federal Reserve Chairman Paul Volcker and former IMF chief economist Simon Johnson, who has said “too big to fail is too big to exist.” Further consider the many proposals simply to ban certain risky activities, whether undertaken by domestic or foreign firms. For instance, the U.S. Securities and Exchange Commission recently banned flash trading. As you know, the WTO’s Appellate Body has determined that a “regulatory ban” constitutes a “quota of zero,” which is prohibited by the GATS Market Access provision forbidding numerical quotas in bound sectors.<sup>5</sup> Indeed, one need only point to the U.S.-Internet Gambling ruling to show that WTO tribunals have been willing not only to second guess the U.S. government (even with respect to which sectors the U.S. committed to GATS), but to ignore the views of virtually the entire community of international legal scholars (in this instance regarding the whether non-discriminatory bans constitute a GATS forbidden “zero quota.”)

Also, the United States listed reservations in its initial 1994 and 1995 GATS schedules that arguably protected the Glass-Steagall firewall between investment and commercial banking. But not only were these reservations removed in the final U.S. 1998 schedule now in effect, but an additional explicit U.S. commitment was taken to “reform” Glass-Steagall. In the U.S. offer in the Doha Round, a new headnote “notes passage of the Gramm-Leach-Bliley Act of 1999 which establishes a framework for financial modernization under which conglomerates can provide a variety of financial services in the United States.” It is not surprising that financial service firewall measures would be the subject of GATS negotiations, since the negotiating history shows that its elimination was one of the primary market access demands of European negotiators and foreign financial services providers. Re-imposition of such firewalls could put the United States in violation of its GATS commitments, yet just such measures are now being discussed as a key element of financial reform here.

Indeed, for countries like the United States (among others) that bound most of their financial services to comply with the GATS Market Access rules, the prohibition on imposing nondiscriminatory bans on risky financial activities and other GATS Art. XVI(2) regulatory constraints directly conflict with our Congress’ goal of restoring financial stability.

***The GATS Article XVII National Treatment Rules Do Not Require Only “playing by the same rules as your domestic providers,” As You Wrote***

In addition to the GATS Market Access deregulation requirements expressed in absolute terms, the existing GATS National Treatment rules extend beyond obliging countries to treat foreign and domestic firms alike. GATS Article XVII(3) states: “*Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Member compared to like services or service suppliers of any other Member.*” In other words, even if a regulatory policy applies to domestic and foreign firms alike, such a policy can violate GATS constraints if it might inadvertently have a different effect on foreign firms.

Obviously it is not possible for governments struggling to reregulate their countries’ banking, securities and insurance sectors to contemplate every possible scenario under which a facially neutral policy might have a disparate effect on a particular foreign firm, especially given the difference could be caused by a firm’s own unforeseeable business decisions. Yet, such facially neutral regulatory policies can run afoul of the existing WTO rules, and thus become subject to challenge. And, as you know, the mere threat of such challenges tends to have a chilling effect on countries’ policy proposals.<sup>6</sup>

***GATS Article VI Sets Criteria Which All Domestic Regulations Must Meet***

The sectors countries agree to submit to comply with the Market Access or National Treatment rules are also *automatically* bound to comply with the limiting criteria provided in GATS Article VI on “Domestic Regulation.” This provision imposes yet further deregulation requirements on countries that agree to undertake what you call “liberalization” of financial services under WTO. Article VI(1) requires that: “*In sectors where specific commitments are undertaken, each Member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.*” This provision poses extremely broad constraints on domestic regulation, as it applies to policies of general application that may *affect* service sector operations, not only those policies designed to regulate a specific service sector or services generally. The provision also provides enormous discretion to a WTO tribunal to determine if the manner in which a country implements its policies is “reasonable, objective and impartial” – all highly subjective measures.

Further, Article VI(5) additionally requires that, with respect to bound sectors, a country “*shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which: (i) does not comply with” a specified set of criteria and “could not reasonably have been expected of that Member at the time the specific commitments in those sectors were made.*” The criteria include that such policies be “*based on objective and transparent criteria, such as competence and the ability to supply the service; not more burdensome than necessary to ensure the quality of the service; and in the case of licensing procedures, not in themselves a restriction on the supply of the service.*”

What exactly is required by these provisions remains contested, and is now the subject of negotiations of the Working Party on Domestic Regulation, which is tasked with writing specific new disciplines on the domestic regulations of countries that have bound any service sector to the WTO. However, it is clear that even *non-discriminatory* domestic policies that fall outside the Market Access-related policy limits and that cover the most fundamental ways in which services are

regulated – licensing and qualification requirements and technical standards – are subject to additional regulatory constraints under existing WTO rules. And, if a WTO member challenges another’s service sector regulations as failing to meet these criteria, a WTO tribunal would make the subjective decisions about the reasonableness, foreseeability and objectivity of the challenged country’s laws.

***The “Understanding on Commitments in Financial Services” Includes Additional Deregulatory Obligations***

The constraints on regulation enumerated above apply to all countries with respect to the various financial service sectors they listed in their GATS schedules. However, as you know, that is not the full extent of the WTO’s financial service deregulation regime. The Understanding on Commitments on Financial Services – adopted by 33 countries, including the United States, Nigeria and most developed nations – explicitly contains a Standstill provision with respect to financial regulation.

The Standstill provision in Section A of the Understanding requires that *“Any conditions, limitations and qualifications to the commitments noted below shall be limited to existing non-conforming measures.”* The Understanding’s Section B then lays out new commitments, including the requirement that countries allow foreign firms to establish a commercial presence (i.e. to acquire or start up operations) in every financial sector -- additional “top-down” commitments that extend beyond the financial service sectors countries specifically listed in their schedules of GATS commitments. These provisions mean that, with respect to a vast array of financial services, these countries are explicitly locked in to their 1990s’ levels of deregulation. That is to say that regardless of changes in government and the harsh lessons delivered by the crisis, they are frozen in the deregulatory past. Furthermore, governments adopting the Understanding are subject to the GATS Article XVI(2) constraints on how they may regulate firms operating in their territories with respect to *every* financial services sector. Both of these obligations starkly conflict with the reregulatory activities underway in numerous countries that adopted the Understanding.

Meanwhile, the Understanding’s Article B(7) requirement that *“A Member shall permit financial service suppliers of any other Member established in its territory to offer in its territory any new financial service”* runs head-on into numerous proposals to require that domestic regulatory authorities review proposed new financial products to determine whether they pose risk to the country’s financial stability before they may be offered for sale. This provision also ensures that, even if the WTO Appellate Body revisits its ruling that regulatory bans are forbidden zero quotas, the Understanding’s adopters will be constrained from banning risky new financial services.

Moreover, the Understanding calls on members to eliminate even non-discriminatory regulatory measures that are *consistent* with all of the specific GATS constraints. This provision is expressed as a “shall endeavor” clause, so it is not enforceable in the same manner as the other provisions’ explicit constraints. However, this provision’s call for what is effectively competitive deregulation indicates the underlying extreme deregulatory philosophy of the Understanding. This is especially relevant today. In the Doha Round, countries including Argentina, Brazil, India, Indonesia, Malaysia, and the Philippines are being asked to adopt the Understanding as a basis for new WTO commitments in financial services.<sup>7</sup>

## ***Doha Round Proposals Would Require Further Deregulation of Finance***

Finally, you state that “The WTO Doha Round does not include further financial services deregulation.” This claim is equally surprising, again, given the actual WTO documents that demonstrate the opposite. Many Doha Round documents remain secret, including the U.S.’s financial services requests of other countries. However, even reviewing those documents that are available, the specific Doha Round proposals that would further financial services deregulation include:

- **A new agreement setting additional constraints on non-discriminatory domestic regulations.** GATS Article VI on Domestic Regulation also includes a mandate in subsection VI(4) for further negotiations to establish “*any necessary disciplines*” “*with a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers...*” As noted, the Working Party on Domestic Regulations is now completing the text of this new agreement.<sup>8</sup> Some countries have pushed for extreme new limits on regulation, including the imposition of a so-called “necessity test.” This would empower WTO tribunals to second-guess domestic governments with respect to the subjective question of whether policies are really necessary, or if less trade restrictive means to meet these policy goals could be employed.<sup>9</sup> Other countries have opposed the necessity test.<sup>10</sup> The efforts of this latter bloc appeared to be prevailing, resulting in draft disciplines on March 20, 2009 that *did* impose certain new constraints, but *not* the necessity language.<sup>11</sup> However, by April 1, 2009, Switzerland, Hong Kong, Taiwan, and Malaysia had revived the demand that the extreme necessity requirement on countries’ domestic service sector regulations be included in these new WTO disciplines.<sup>12</sup> The imposition of *any* new WTO constraints on countries’ service sector regulation in the post-crisis context would undoubtedly be a cause of ire among many countries’ domestic legislative and regulatory bodies.
- **A new agreement imposing limits on accountancy sector regulation.** Already completed and slated for adoption as part of the Doha Round is an agreement establishing new “disciplines” to restrict non-discriminatory regulations in the accounting sector.<sup>13</sup> According to the *Accountancy Disciplines* text, they apply to any measure “affecting trade in accountancy services,” not only to accountancy regulations *per se*.<sup>14</sup> This includes the requirement that accounting regulations be limited to what WTO tribunals judge to be “necessary.” These rules will put pressure on governments to deregulate the accountancy sector, rather than better regulate it, as was called for in the G-20 Communiqués.<sup>15</sup>
- **WTO countries are under pressure to submit additional financial sectors to the GATS Market Access rules – and thus subject themselves to all of the related regulatory constraints.**<sup>16</sup> For instance, a Doha Round “Financial Services Collective Request” was submitted by Australia, Canada, the European Communities, Ecuador, Hong Kong, Japan, Korea, Norway, Taiwan, and the United States. It calls on countries to “remove limitations such as monopolies, numerical quotas or economic needs tests and mandatory cessions.” This translates into a request for all WTO signatory countries to make new financial service sector commitments under GATS Article XVI(2) on Market Access, with all the attendant problems noted above. The European Union’s country-specific financial service demands, which were leaked and thus are publicly available, also list a startling array of *specific* regulatory policies that the EU is demanding countries eliminate. The country-specific demands of other countries (such as those made by the United States) are not publicly available, so we cannot know if they contain similar



additional deregulation demands. However, you and your staff have access to these documents, and can review whether such specific deregulation demands are being made more widely.

- **“Increased use of the Understanding by Members as a minimum standard for liberalization.”**<sup>17</sup> This Swiss proposal has a parallel in the leaked EU requests. Indeed, an array of developing nations face demands to adopt the Understanding and its extreme deregulation requirements in the current Doha Round negotiations. Were this to occur, more countries would be subject to the regulatory standstill, required to allow in all new risky financial products and services of foreign firms, and also required to allow establishment of foreign firms’ operations within their countries on a top-down basis, along with all of the Understanding’s other deregulatory terms noted above.
- **“Standstill on certain non-discriminatory measures.”**<sup>18</sup> Even for countries that do not adopt the Understanding, the EU is calling for a stand-alone commitment to lock in countries’ current levels of deregulation.

## ENDNOTES

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<sup>1</sup> WTO GATS Art. XVI (b).

<sup>2</sup> WTO GATS Art. XVI (2) (a-e).

<sup>3</sup> “Guidelines For The Scheduling Of Specific Commitments Under The General Agreement On Trade In Services,” WTO Document S/L/92, March 28, 2001, Para 8, at 4.

<sup>4</sup> Precisely how the GATS Art. XVI(2) bans on certain forms of regulation would be applied with respect to a challenge of any specific domestic policy would be determined by a WTO tribunal. For instance, proposals now being considered could run afoul of the rules against regulating based on “*limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test*” or based on “*limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test*”. As one prominent legal scholar noted, “the exact meaning of the notion of ‘total’” in several of the Article XVI(2) subparagraphs is not defined, nor “whether it applies to each service or service supplier individually.” Thus, this scholar notes, if WTO members wish to *make certain* the article does not apply to measures affecting individual service providers – such as size limitations on individual large banks – this would have to be the subject of new negotiations. (Markus Krajewski, *National Regulation and Trade Liberalization in Services*, (The Hague: Kluwer Law International, 2003), at 90-91.) The GATS Article XVI(2) provision forbidding “*measures which restrict or require specific types of legal entity or joint venture*” is also open to broad interpretation, including with respect to what is included under the vague term “legal entity.” Does this mean governments cannot require a certain corporate form and related conditions of licensure in order to offer a specific type of service the government may seek to closely supervise? Does this mean governments cannot forbid certain risky financial services from being offered by entities that fail to meet certain criteria?

<sup>5</sup> Report of the WTO Appellate Body, “United States – Measures affecting the cross-border supply of gambling and betting services,” WT/DS285/AB/R, April 7, 2005.

<sup>6</sup> See, for instance, “Under U.S. Pressure, EU Backs Off Carbon Import Taxes For Now,” *Inside U.S. Trade*, Jan. 25, 2008.

<sup>7</sup> See <http://www.gatswatch.org/requests-offers.html>

<sup>8</sup> “The Working Party on Professional Services shall continue its work pursuant to the terms of reference contained in the Decision on Professional Services (S/L/3) taking account of any decisions which may be taken in the Council regarding work on Article VI:4. In doing so the Working Party shall aim to develop general disciplines for professional services, while retaining the possibility to develop or revise sectoral disciplines, including accountancy. No later than the conclusion of the forthcoming round of services negotiations, the disciplines developed by the WPPS are intended to be integrated into the General Agreement on Trade in Services (GATS).” See “Decision on Disciplines Relating to the Accountancy Sector, Adopted by the Council for Trade in Services on 14 December 1998,” WTO Document S/L/63, Dec. 15, 1998. See also,

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Ellen Gould and Bob Stumberg, "The Draft GATS Domestic Regulation Disciplines – Potential Conflicts with Developing Country Regulations," South Center, SC/AN/TDP/SV/12, July 2009. Available at: <http://www.uneca.org/atpc/egm0909/GATS.pdf>.

<sup>9</sup> Panagiotis Delimatsis, "Determining the Necessity of Domestic Regulations in Services: The Best is Yet to Come," *European Journal of International Law*, 19:2, 2008. See comment by Switzerland in "Report on the Meeting Held on 1 April 2009: Note by the Secretariat," WTO Document S/WPDR/M/40, May 12, 2009; Patricia J. Arnold, "Disciplining domestic regulation: the World Trade Organization and the market for professional services," *Accounting, Organizations and Society*, 30: 4, May 2005, at 306 and 316; Joel P. Trachtman, "Transatlantic regulatory cooperation from a trade perspective: a case study in accounting standards," in *Transatlantic Regulatory Cooperation: Legal Problems and Political Prospects*, (London: Oxford University Press, 2000), at 232.

<sup>10</sup> See for instance comment by U.S. Trade Representative's Office in a meeting with the Transatlantic Consumer Dialogue, at [http://tacd.org/index.php?option=com\\_content&task=view&id=115&Itemid=1](http://tacd.org/index.php?option=com_content&task=view&id=115&Itemid=1).

<sup>11</sup> In the text of the draft disciplines published on March 20, 2009, the following provision was included under paragraph 10 on "General Provisions": "These disciplines apply to measures by Members relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards affecting trade in services *where specific commitments are undertaken*." (Emphasis added). The necessity test was also excluded. See: "Disciplines on Domestic Regulation Pursuant to GATS Article VI:4, Second Revision, Informal Note by the Chairman," WTO Document, March 20, 2009. Available at: <http://www.tradeobservatory.org/library.cfm?refID=106851>

<sup>12</sup> "Report on the Meeting Held on 1 April 2009: Note by the Secretariat," WTO Document S/WPDR/M/40, May 12, 2009.

<sup>13</sup> The press release announcing the accountancy disciplines said: "Before the end of the forthcoming round of services negotiations, which commence in January 2000, all the disciplines developed by the WPPS are to be integrated into the GATS and will then become legally binding." See: [http://www.wto.org/english/news\\_e/pres98\\_e/pr118\\_e.htm](http://www.wto.org/english/news_e/pres98_e/pr118_e.htm)

<sup>14</sup> The Council on Trade in Services adopted a decision which said, "These disciplines are to be applicable to Members who have entered specific commitments on accountancy in their schedules.." Such a restriction is not included in the *Accountancy Disciplines* text itself. Thus, the exact interpretation of which countries and measures would be covered when the disciplines are implemented is thus somewhat indeterminate in the text. See: "Decision on Disciplines Relating to the Accountancy Sector, Adopted by the Council for Trade in Services on 14 December 1998," WTO Document S/L/63, Dec. 15, 1998.

<sup>15</sup> See e.g. Leaders Statement, The Pittsburgh Summit, Sept. 24, 2009 at, A Framework for Strong, Sustainable, and Balanced Growth para. 14: "We call on our international accounting bodies to redouble their efforts to achieve a single set of high quality, global accounting standards within the context of their independent standard setting process, and complete their convergence project by June 2011..."

<sup>16</sup> See "Financial Services Collective Request" at 2.

<sup>17</sup> "Communication from Switzerland – GATS 2000: Financial Services," WTO document S/CSS/W/71, May 4, 2001.

<sup>18</sup> "Communication from the European Communities and their Member States: GATS 2000: Financial Services," WTO document S/CSS/W/39, Dec. 22, 2000.