

Disciplines on Domestic Regulation:

How to better understand and participate in the negotiations

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*How to better understand
and participate in the negotiations*

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*This presentation is made on a purely personal basis and does not prejudice official position of the Government of Japan nor of Japan Business Federation.

Synopsis

1. What are 'DR Disciplines'?
 2. What are the benefits of 'DR Disciplines'?
 3. What is the implication of each proposal?
 4. What is required for Members to be engaged in the negotiations?
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What are DR Disciplines?

1. They are disciplines on measures relating to **Licensing Requirements, Licensing Procedures, Qualification Requirements, Qualification Procedures and Technical Standards**.
2. These measures should be: based on **objective and transparent criteria** and **not more burdensome than necessary**.

What are 'DR Disciplines'?

- They do *not* deprive Members of their **Right to Regulate** itself.
- They do *not* cover **every kind of regulations**.
- They do *not* prejudice the application of any **other provisions in the GATS**, such as Prudential Curve-Out, General Exceptions and Security Exceptions, etc.

Disciplines=More **TRANSPARENT&SLIM** regulations!

What are the benefits of 'DR Disciplines'?

- Regulatory Transparency:
 1. assures **legal certainty** and **predictability** for foreign service suppliers;
 2. reduces the room for **arbitrary operation** of regulations, and thus
 3. enables foreign service suppliers to operate based on **long-term business strategies** under stable regulatory environment.
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What are the benefits of 'DR Disciplines'?

- Slim Regulations
 1. save **foreign service suppliers** costs for administrative procedures,
 2. save also **domestic service suppliers** costs for administrative procedures, and
 3. save **regulatory authorities** administrative costs.
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What is the implication of each proposal?

- Transparency
 1. Publication of **COMPETENT AUTHORITIES**
Benefit: facilitates **access to necessary information** on regulations.
Cost: impose on governments **cost to update and publicize** information on all the relevant authorities.
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What is the implication of each proposal?

- Transparency
 2. **ADVANCE PUBLICATION**
Benefit: makes regulatory changes **predictable** and gives service suppliers **time to prepare** for the changes.
Cost: takes authorities **more time** to make regulatory changes.
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What is the implication of each proposal?

- Transparency

3. **PRIOR COMMENTS**

Benefit: makes **business interest** reflected in regulations.

Cost: takes authorities **more time and resources** to make regulatory changes.

What is the implication of each proposal?

- Licensing Requirements

1. **TRANSPARENCY**

Benefit: facilitates application for licenses by making requirements **predictable** and **legally stable**.

Cost: imposes on authorities **cost to publicize relevant information** and deprive them of **freedom of arbitrary operation or changes** of regulations.

What is the implication of each proposal?

- Licensing Requirements
 - 2. Rules on **RESIDENCY REQUIREMENTS**
Benefit: lower trade barriers for foreign service suppliers.
Concern: have to take into account local conditions.
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What is the implication of each proposal?

- Licensing Procedures
 - 1. **TRANSPARENCY**
Benefit: guarantees impartiality and legal certainty of the processing of applications.
Cost: imposes on authorities cost to publicize relevant information and deprive them of freedom of arbitrary processing of applications.
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What is the implication of each proposal?

- Licensing Procedures
 - 2. **STANDARD PROCESSING TIME-FRAME**
Benefit: expedites the processing of applications.
Cost: imposes on authorities obligation to meet the timeline.
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What is the implication of each proposal?

- Licensing Procedures
 - 3. Rules on **DOCUMENTATION**
Benefit: lower cost for applicants by reducing unnecessary documentation.
Cost: obligate authorities to review and restructure documentation.
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What is the implication of each proposal?

- Licensing Procedures
 - 4. Rules on **FEES**
Benefit: lower cost for applicants by prohibiting **unduly expensive fees**.
Cost: reduces authorities' **revenue from fees**.
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What is the implication of each proposal?

- Qualification Requirements
 - 1. **TRANSPARENCY**
Benefit: facilitates application for qualifications by making requirements **predictable** and **legally stable**.
Cost: imposes on authorities **cost to publicize relevant information** and deprive them of **freedom of arbitrary operation or changes** of regulations.
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What is the implication of each proposal?

- Qualification Requirements
 - 2. Rules on **EXAMINATION SUBJECTS**
Benefit: free applicants from **irrelevant subjects** of exams and unnecessary **residency requirements**.
Cost: obligate authorities to **review** contents of examinations.
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What is the implication of each proposal?

- Qualification Requirements
 - 3. Rules on **LANGUAGE REQUIREMENTS**
Benefit: **increase opportunity** for applicants who is not fluent in local language.
Cost: require authorities to **adjust exams** in such ways as to accommodate these applicants.
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What is the implication of each proposal?

- Qualification Requirements

4. **VERIFICATION**

Benefit: facilitates obtaining qualifications by holders of foreign qualification.

Cost: impose on authorities cost to create mechanisms for verification.

What is the implication of each proposal?

- Qualification Procedures

1. **TRANSPARENCY**

Benefit: guarantees impartiality and legal certainty of the processing of applications.

Cost: impose on authorities cost to publicize relevant information and deprive them of freedom of arbitrary processing of applications.

What is the implication of each proposal?

- Qualification Procedures
 - 2. Rules on **EXAMINATIONS**
(frequency, electronic means, period for application, etc.)
Benefit: provide **more opportunity** for applicants to take exams.
Cost: impose on authorities cost to **review and adjust** all the exams.
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What is the implication of each proposal?

- Qualification Requirements
 - 3. **STANDARD TIME-FRAME** for verification
Benefit: **expedites** verification of competence of applicants.
Cost: imposes on authorities **obligation to meet the timeline.**
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What is the implication of each proposal?

- Qualification Procedures
 - 4. Rules on **FEES**
Benefit: lower cost for applicants by prohibiting **unduly expensive fees**.
Cost: reduces authorities' **revenue from fees**.
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What is the implication of each proposal?

- Technical Standards
 - 1. **TRANSPARENCY**
Benefit: guarantees **impartiality** and **legal certainty** of the application of technical standards.
Cost: imposes on authorities **cost to publicize relevant information** and deprive them of **freedom of arbitrary application** of technical standards.
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What is the implication of each proposal?

- Technical Standards
- 2. Use of **INTERNATIONAL STANDARDS**
Benefit: makes domestic technical standards more **objective** and **universal**, thus easy for service suppliers to observe.
Cost: requires authorities for **understanding** of international standards.

What is required for Members to be engaged in the negotiations?

- Consideration of **BENEFITS**
- 1. **Consultation with service suppliers** who have interest in doing business abroad
- 2. Estimation of how much each discipline improves their **competitiveness** and increase their **business opportunity** abroad
- 3. Estimation of effect of **domestic regulatory reform**

What is required for Members to be engaged in the negotiations?

- Consideration of **COSTS**
 1. Consultation with relevant authorities
 2. Estimation of **what is acceptable** and **what is NOT acceptable**
 3. In case of what is not acceptable, estimation of **transitional period** required for adjustment

What is required for Members to be engaged in the negotiations?

- **BALANCE**
 1. between **benefits & costs**, or in other words, **offensive & defensive** interest
 2. among **interests of different Members** and seek pragmatically for agreement
 3. between consideration for **developing Members** & benefits for service suppliers

Conclusion

With each Members'

- **understanding** of each proposal,
 - efforts to undertake necessary **consultation**,
 - sense of **balance**,
 - **courage** to make changes, and
 - **pragmatism** to find common solution,
- the negotiations will see early and successful conclusion.

