

General Introduction of Domestic Regulation

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Role of the WTO and GATS in Domestic Regulation



- ☞ WTO has no direct role either in promoting the creation of domestic regulations or in specifying their content. *WTO is not a standard-setting organization*
- ☞ GATS preamble explicitly recognizes the right of Members to regulate in order to meet legitimate national policy objectives
- ☞ GATS objective is to ensure that regulations do not create unnecessary barriers to trade

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Trade Barriers & Domestic Regulation



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| <ul style="list-style-type: none">☞ Market Access (Article XVI)<ul style="list-style-type: none">– quantitative restrictions☞ National Treatment (Article XVII)<ul style="list-style-type: none">– discriminatory measures | <ul style="list-style-type: none">☞ Domestic Regulation (Article VI)<ul style="list-style-type: none">– qualitative requirements– - regulatory autonomy of Members subject to GATS rules aimed at minimising trade restrictive effects (Article VI:1&4) |
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GATS Article VI - in brief



In sectors where commitments are undertaken:

- ☞ VI:1 - Reasonable, objective and impartial administration of measures of general application
- ☞ VI:3 - Decisions on applications within a reasonable period
- ☞ VI:6 - Procedures to verify competence

In all sectors, with or without commitments:

- ☞ VI:2 - Procedures for the review of administrative decisions affecting trade in services

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Regulatory Disciplines... To be developed (Article VI:4)



- ☞ To ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade, *the Services Council shall develop any necessary disciplines*"
- ☞ Such disciplines shall aim to ensure that these are, *inter alia*:
 - (a) based on objective and transparent criteria
 - (b) not more burdensome than necessary
 - (c) in the case of licensing procedures, not in themselves a restriction on supply

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Regulatory Disciplines... Provisional application (Article VI:5)



- ☞ “(a) In sectors in which a Member has undertaken specific commitments, pending the entry into force of disciplines developed in these sectors pursuant to paragraph 4, the Member shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments ...”
- ☞ (b) In determining whether a Member is in conformity with the obligation under paragraph 5(a), *account shall be taken of international standards of relevant international organizations* applied by that Member.”

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Stages achieved thus far...



- ☞ Ministerial Decision on Professional Services
- ☞ Results of the Working Party on Professional Services
- ☞ Working Party on Domestic Regulation

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Ministerial Decision on Professional Services



- ☞ April 1995
- ☞ Established the Working Party on Professional Services (WPPS)
- ☞ Required the immediate implementation of GATS Article VI:4
- ☞ Gave priority to the accountancy sector

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Creation of MRA *Guidelines*



- ☞ 28 May, 1997: WTO Council for Trade in Services adopted the voluntary *Guidelines for Mutual Recognition Agreements in the Accountancy Sector*.
- ☞ In addition to a reminder of Article VII notification requirements, the *Guidelines* give recommendations on the form and content of MRAs in accountancy.

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Disciplines on Domestic Regulation in Accountancy (Dec. 1998) - in Brief



Do not address measures subject to scheduling under Articles XVI and XVII of the GATS

Necessity test

To ensure that measures are not more trade-restrictive than necessary to fulfil a legitimate objective. Legitimate objectives are, *inter alia*, the protection of consumers, the quality of the service, professional competence, and the integrity of the profession

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Accountancy Disciplines - in Brief (Cont.)



Transparency

- provide information on competent authorities
- provide information on activities regulated, licensing requirements and procedures, qualification requirements and procedures; and technical standards
- inform the rationale behind measures in relation to legitimate objectives (upon request)
- endeavour to provide opportunity for prior comment before adoption of new measures

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Accountancy Disciplines - in Brief (Cont.)



☐ Licensing requirements

e.g. membership in professional organisations; non-discriminatory residency requirements; use of firms names; professional indemnity insurance; cost-based fees)

☐ Licensing procedures

e.g. application procedures and related documentation; information on status of applications; immediate entry into force of licences

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Accountancy Disciplines - in Brief (Cont.)



☐ Qualification requirements (incl. equivalency of education, experience, and/or examination requirements)

☐ Qualification procedures (incl. verification of an applicant's qualifications; scheduling of examinations; and non-discriminatory residency requirements)

☐ **Technical standards:** only to fulfil legitimate objectives; and take account of internationally recognized standards

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WTO Working Party on Domestic Regulation (WPDR)



- Established 26 April 1999.
- Replaced the Working Party on Professional Services.
- Emphasis on the development of generally applicable disciplines for all services sectors.

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Domestic Regulation - Issues under consideration



- Necessity Test -- obligation not to create “unnecessary barriers to trade” / policy objectives / least trade restrictive measure / reasonably available alternative means**
- Transparency -- clarifications of existing GATS transparency provisions / creating additional requirements?**
- Equivalence -- consideration of education, professional experience, etc. obtained abroad**
- International Standards -- role as a benchmark? / presumption in favour of regulation based on IS / requirement to base regulation on IS**

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Domestic Regulation in the New Round



Negotiating Guidelines

Adopted by the Council for Trade in Services on 28 March 2001

☞ “Members shall aim to complete negotiations under Articles VI:4 ...prior to the conclusion of negotiations on specific commitments.”

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Domestic Regulation in the New Round



Negotiating Proposals

Special Session of the Council for Trade in Services

☞ Nearly every negotiating proposal included domestic regulation aspects.

☞ “Transparency and Other Aspects of Domestic Regulation” was one of the horizontal issues in Special Session discussions.

☞ Canada and the U.S. submitted specific proposals on transparency (S/CSS/W/47 and 102). ¹⁸

Workshop on Domestic Regulation: 29-30 March 2004



- ☞ GATS and Domestic Regulation
- ☞ Concepts Related to the Development of Disciplines on Domestic Regulation
- ☞ Wider applicability of the *Accountancy Disciplines*?
- ☞ Regulators (and “Regulatees”) Views
- ☞ Future Possibilities

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Domestic Regulation in the DDA



Hong Kong Ministerial Declaration

Adopted on 18 December 2005

“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 doing so, Members shall consider proposals and the illustrative list of elements for Article VI:4 disciplines.”

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Illustrative List of Elements (1)



- ☞ Licensing requirements and procedures
 - Transparency, requirements, procedures, documentation, review/appeal, timeframes and fees
- ☞ Qualification requirements and procedures
 - Transparency, requirements, verification of qualifications and assessment of equivalency, examinations, procedures, documentation, review/appeal, timeframes, fees, mutual recognition agreements
- ☞ Technical standards
 - Transparency, conformity assessment, use of international standards setting bodies

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Illustrative List of Elements (2)



- ☞ Transparency (horizontal)
 - Mechanism to respond to enquiries, publication, notice and comment, transparency of application procedures
- ☞ Objective scope and application
 - Right to regulate, sector specific versus horizontal disciplines, application to specific commitments, non overlap with other GATS provisions
- ☞ Definitions
- ☞ Development considerations
 - Compliance, Implementation, technical assistance and capacity building

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Members' Proposals - I



- ▣ Japan – Draft Annex on Domestic Regulation
- ▣ EC – Licensing Procedures
- ▣ Colombia – Visa or Entry Permit Procedures
- ▣ Mexico and Switzerland – Technical Standards
- ▣ India and others – Qualification Requirements and Procedures
- ▣ Brazil and others – Elements for Draft Disciplines
- ▣ United States – Transparency Disciplines
- ▣ Hong Kong and Others – Application to Different Levels of Government and NGOs

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Members' Proposals - II



- ▣ Australia – Legal and Engineering Services
- ▣ Chinese Taipei – Telecommunications
- ▣ Chinese Taipei – Definitions
- ▣ China and Pakistan – Proposed Disciplines
- ▣ ACP Group – Pro-development Principles
- ▣ African Group – Communication on Domestic Regulation
- ▣ SVEs – Trade-Related Concerns
- ▣ Hong Kong and Others – Proposal for Draft Text

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DR Disciplines – Possible Legal Form



Annex to the GATS

- Scope of application (only where commitments are undertaken?)
- Uniformity of application
- Requires consensus
- Requires amendment of GATS

Reference paper(s)

- Non-uniform application
- Does not require consensus
- Does not require amendment of GATS


Other forms (e.g. additional commitments under Article XVIII)


- To be negotiated through request-offer


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WPDR – The Way Forward



 Issues paper by the Chairman

 Members to convert their proposals into legal text

 Mandate to the Chairman to produce a first comprehensive draft

 Text based negotiations on Chairman draft

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