

WORLD TRADE ORGANIZATION

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[unofficial annotation
prepared by Laurel Terry
to show the changes
recommended by the IBA
on Sept. 18, 2003]

Trade in Services

[Unofficial, Annotated] **DISCIPLINES ON DOMESTIC REGULATION
IN THE ACCOUNTANCY SECTOR**
[showing changes that the International Bar Association (IBA)
recommends be made *if* this document is applied to the legal profession.
On Sept. 18, 2003, the IBA unanimously adopted a Resolution that endorsed these
changes and authorized transmission of the Resolution to the WTO Secretariat.]

Adopted by the Council for Trade in Services on 14 December 1998

I. OBJECTIVES

1. Having regard to the Ministerial Decision on Professional Services, Members have agreed to the following disciplines elaborating upon the provisions of the GATS relating to domestic regulation of the sector. The purpose of these disciplines is to facilitate trade in ~~accountancy~~ services by ensuring that domestic regulations affecting trade in ~~accountancy~~ services meet the requirements of Article VI:4 of the GATS. The disciplines therefore do not address measures subject to scheduling under Articles XVI and XVII of the GATS, which restrict access to the domestic market or limit the application of national treatment to foreign suppliers. Such measures are addressed in the GATS through the negotiation and scheduling of specific commitments.

II. GENERAL PROVISIONS

2. Members shall ensure that measures not subject to scheduling under Articles XVI or XVII of the GATS,¹ relating to licensing requirements and procedures, technical standards and qualification requirements and procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary barriers to trade in ~~accountancy~~ services. For this purpose, Members shall ensure that such measures are not more trade-restrictive than necessary to fulfil a legitimate objective *For the purpose of defining what is "necessary" in the context of legal services, it is recognised that in many Member States, lawyers play an essential role in protecting individual political, civil and economic rights and that the rule of law and integrity of the legal system, promoted by lawyers, is vital and important to the highest degree. Therefore, it is recognised that those entities involved in the regulation of lawyers have an area of reasonable discretion in making decisions which involve the protection of those core values of the profession which fall within legitimate objectives.* Legitimate objectives are, inter alia, the protection of consumers (which includes all users of ~~accounting~~ legal services and the public generally), the quality of the service, professional competence, *the protection of the independence of the profession, the protection of confidentiality and the professional secret, the avoidance of conflicts of interest,* and the integrity of the profession

III. TRANSPARENCY

3. Members shall make publicly available, including through the enquiry and contact points established under Articles III and IV of the GATS, the names and addresses of competent authorities

¹ The text of GATS Articles XVI and XVII is reproduced in an appendix to this document

(i.e. governmental or non-governmental entities responsible for the licensing and/or disciplining of professionals or firms, ~~or accounting regulations~~).

4. Members shall make publicly available, or shall ensure that their competent authorities make publicly available, including through the enquiry and contact points:

- (a) where applicable, information describing the activities and professional titles which are regulated or which must comply with specific technical standards, including ethical rules and rules of professional conduct;
- (b) requirements and procedures to obtain, renew or retain any licences or professional qualifications and the competent authorities' monitoring arrangements for ensuring compliance;
- (c) information on technical standards, including ethical rules and rules of professional conduct; and
- (d) upon request, confirmation that a particular professional or firm is licensed to practise within their jurisdiction.

5. Members shall inform another Member, upon request, of the rationale behind domestic regulatory measures in the ~~accountancy~~-sector, in relation to legitimate objectives as referred to in paragraph 2.

6. When introducing measures which significantly affect trade in ~~accountancy~~-services, Members shall endeavour to provide opportunity for comment, and give consideration to such comments, before adoption.

7. Details of procedures for the review of administrative decisions, as provided for by Article VI:2 of the GATS, shall be made public, including the prescribed time-limits, if any, for requesting such a review.

IV. LICENSING REQUIREMENTS

8. Licensing requirements (i.e. the substantive requirements, other than qualification requirements, to be satisfied in order to obtain or renew an authorization to practice) shall be pre-established, and publicly available and objective, including licensing requirements in relation to temporary services provided under home title, and in relation to permanent establishment under home title and shall consider any disciplinary sanctions imposed on applicant lawyers by the relevant professional bodies in their home countries. In this and subsequent articles where the words 'qualification' and 'licensing' appear, they shall have the following meanings: 'qualification' shall mean the substantive requirements that a lawyer is required to fulfill to obtain a certification or license, such as education, examination requirements, practice training and experience or language requirements. Licensing requirements are those substantive requirements, other than qualification requirements, with which a lawyer must comply in order to obtain formal permission to supply legal services. Thus, a WTO Member State may have both qualification and licensing requirements and procedures for: (i) "full licensing" systems, which grant access to the full local title of lawyer; (ii) "limited licensing" systems which grant access to something less than the full local title of lawyer; and (iii) requirements that address temporary services provided under home title.'

9. Where residency requirements not subject to scheduling under Article XVII of the GATS exist, Members shall consider whether less trade restrictive means could be employed to achieve the purposes for which these requirements were set, taking into account costs and local conditions.

10. Where membership of a professional organisation is required, in order to fulfil a legitimate objective in accordance with paragraph 2, Members shall ensure that the terms for membership are reasonable, and do not include conditions or pre-conditions unrelated to the fulfilment of such an objective. Where membership of a professional organization is required as a prior condition for application for a licence (i.e. an authorization to practice), the period of membership imposed before the application may be submitted shall be kept to a minimum.

11. Members shall ensure that the use of firm names is not restricted, save in fulfilment of a legitimate objective.

12. Members shall ensure that requirements regarding professional indemnity insurance for foreign applicants take into account any existing insurance coverage, in so far as it covers activities in its territory or the relevant jurisdiction in its territory and is consistent with the legislation of the host Member, subject to Members being permitted to put the burden, including the costs of the exercise, on to foreign applicants to show the extent of their existing insurance, and the solvency and security of the company providing such insurance. The same principles shall apply to any existing pension or social security arrangements or fidelity fund for which Members have requirements covering foreign applicants.

13. Fees charged by the competent authorities shall reflect the administrative costs involved, and shall not represent an impediment in themselves to practising the relevant activity. This shall not preclude the recovery of any additional costs of verification of information, processing and examinations. A concessional fee for applicants from developing countries may be considered.

V. LICENSING PROCEDURES

14. Licensing procedures (i.e. the procedures to be followed for the submission and processing of an application for an authorization to practise) shall be pre-established, publicly available and objective, and shall not in themselves constitute a restriction on the supply of the service.

15. Application procedures and the related documentation shall be not more burdensome than necessary to ensure that applicants fulfil qualification and licensing requirements. For example, competent authorities shall not require more documents than are strictly necessary for the purpose of licensing, and shall not impose unreasonable requirements regarding the format of documentation. Where minor errors are made in the completion of applications, applicants shall be given the opportunity to correct them. The establishment of the authenticity of documents shall be sought through the least burdensome procedure and, wherever possible, authenticated copies should be accepted in place of original documents.

16. Members shall ensure that the receipt of an application is acknowledged promptly by the competent authority, and that applicants are informed without undue delay in cases where the application is incomplete. The competent authority shall inform the applicant of the decision concerning the completed application within a reasonable time after receipt, in principle within six months, separate from any periods in respect of qualification procedures referred to below.

17. On request, an unsuccessful applicant shall be informed of the reasons for rejection of the application. An applicant shall be permitted, within reasonable limits, to resubmit applications for licensing.

18. A licence, once granted, shall enter into effect immediately, in accordance with the terms and conditions specified therein.

VI. QUALIFICATION REQUIREMENTS

19. A Member shall ensure that, *whether or not the Member adopts the “full licensing” system or the “limited licensing” system*, its competent authorities take account of qualifications acquired in the territory of another Member, on the basis of equivalency of education, experience and/or examination requirements.

~~20. The scope of examinations and of any other qualification requirements shall be limited to subjects relevant to the activities for which authorization is sought. Qualification requirements may include education, examinations, practical training, experience and language skills.~~

~~21~~20. Members note the role which mutual recognition agreements can play in facilitating the process of verification of qualifications and/or in establishing equivalency of education.

VII. QUALIFICATION PROCEDURES

~~22~~21. Verification of an applicant's qualifications acquired in the territory of another Member shall take place within a reasonable time-frame, in principle within six months and, where applicants' qualifications fall short of requirements, shall result in a decision which identifies additional qualifications, if any, to be acquired by the applicant.

~~23~~22. Examinations shall be scheduled at reasonably frequent intervals, in principle at least once a year, and shall be open for all eligible applicants, including foreign and foreign-qualified applicants. Applicants shall be allowed a reasonable period for the submission of applications. Fees charged by the competent authorities shall reflect the administrative costs involved, and shall not represent an impediment in themselves to practising the relevant activity. This shall not preclude the recovery of any additional costs of verification of information, processing and examinations. A concessional fee for applicants from developing countries may be considered.

~~24~~23. Residency requirements not subject to scheduling under Article XVII of the GATS shall not be required for sitting examinations.

VIII. TECHNICAL STANDARDS

~~25~~24. Members shall ensure that measures relating to technical standards are prepared, adopted and applied only to fulfil legitimate objectives. *In the context of legal services, the term “technical standards” refers not only to technical standards in the narrow sense, but also ethical rules and rules of professional conduct.*

~~26~~25. In determining whether a measure is in conformity with the obligations under paragraph 2, account shall be taken of *any* internationally recognized standards (*such term to mean not only technical standards in the narrow sense, but also ethical rules and rules of professional conduct*) of relevant international organizations² applied by that Member.

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.

APPENDIX

For the purpose of clarity, the text of GATS Articles XVI and XVII is reproduced below.

Article XVI

Market Access

1. With respect to market access through the modes of supply identified in Article I, each Member shall accord services and service suppliers of any other Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.³
2. In sectors where market-access commitments are undertaken, the measures which 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, are defined as:
 - (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;⁴
 - (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;
 - (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
 - (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign share-holding or the total value of individual or aggregate foreign investment.

³ If a Member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(a) of Article I and if the cross-border movement of capital is an essential part of the service itself, that Member is thereby committed to allow such movement of capital. If a Member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(c) of Article I, it is thereby committed to allow related transfers of capital into its territory.

⁴ Subparagraph 2(c) does not cover measures of a Member which limit inputs for the supply of services.

Article XVII

National Treatment

1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.⁵
2. A Member may meet the requirement of paragraph 1 by according to services and service suppliers of any other Member, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
3. 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.

⁵ Specific commitments assumed under this Article shall not be construed to require any Member to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service supplies.