



WORLD TRADE ORGANIZATION
ORGANISATION MONDIALE DU COMMERCE
ORGANIZACIÓN MUNDIAL DEL COMERCIO

Direct line: (+41 22) 739 5435
Direct fax: (+41 22) 739 5771
Email: Abdel-Hamid.Mamdouh@wto.org

International Bar Association
271 Regent Street London, W 1B, 2AQ
United Kingdom

Reference:

Dear Mr.Ellis,

The Working Party on Domestic Regulation (WPDR) of the World Trade Organization (WTO) has requested the WTO Secretariat to conduct consultations with international professional services associations regarding the potential applicability of elements of the *Disciplines on Domestic Regulation in the Accountancy Sector* (see Annex I and the attached Background Information) for other professions.

The *Accountancy Disciplines* were adopted by the Council for Trade in Services in December 1998 (Annex II). At the time, the Council stipulated that the *Accountancy Disciplines* would come into force no later than the conclusion of the current round of services negotiations. An important element of the Council *Decision* adopting the *Accountancy Disciplines* was the statement that WTO Members would continue their work on domestic regulation, aiming to develop general disciplines for professional services while retaining the possibility to develop additional sectoral disciplines.

To help advance the work on professional services, three questions were suggested regarding the potential applicability of elements of the *Accountancy Disciplines* to other professions:

- Are there any elements of the disciplines which you consider are not appropriate for your profession? If so, please set out which and why you consider they are inappropriate. Please also suggest what changes would make them appropriate.
- Are there any points or areas which you consider are missing from the disciplines and which you feel should be included? If so, please indicate clearly what these are and why they should be included;
- Are there any elements of the disciplines which you feel need to be improved? If so, please set them out and why;

./.

The Working Party would greatly appreciate your organization's responses to the above questions, for each of the professions your organization is concerned with. It would also be greatly appreciated if you were to include in your response any information concerning your organization's activities in regard to international regulatory issues.

Your early response will constitute a valuable input to the discussions of the Working Party on the relevant issues. It would therefore be helpful if your response was received by the end of February 2003, in order to ensure its timely circulation to Members of the Working Party before its March meeting. However, in case this would not be feasible, your response would still be appreciated at your earliest convenience. It should be noted that this is a continuing exercise and the overall services negotiations, of which this process is part, is due to conclude by 1 January 2005.

Thank you for your attention. Please contact me if any additional information is required.

Yours sincerely,

Hamid Mamdouh
Director
Trade in Services

Encl.: ATTACHMENTS



WORLD TRADE ORGANIZATION
ORGANISATION MONDIALE DU COMMERCE
ORGANIZACIÓN MUNDIAL DEL COMERCIO

BACKGROUND INFORMATION

In the context of the Uruguay Round negotiations, governments recognized the potentially trade-restrictive effects of certain non-discriminatory domestic regulatory measures, and agreed to consider developing specific disciplines to ensure that they were not more burdensome or trade restrictive than necessary. The result was Article VI:4 of the General Agreement on Trade in Services (GATS), which refers to three types of regulation (licensing requirements, qualification requirements and procedures, and technical standards) and mandates the development of “any necessary disciplines”.

Recognizing as well that regulation is especially pervasive in professional services, the first step in implementing the mandate of GATS Article VI:4 was the 1995 Ministerial *Decision on Professional Services*, and the establishment of the Working Party on Professional Services (WPPS). After several years of discussions, including in regard to determining the coverage of Article VI:4 vis-à-vis the market access and national treatment provisions of Articles XVI and XVII of the GATS (see Annex III), WTO Members succeeded in creating the *Accountancy Disciplines*, adopted in December 1998.

WTO Members subsequently embarked upon a major expansion of their efforts to develop regulatory disciplines under Article VI:4. In April 1999 the Council for Trade in Services established the Working Party on Domestic Regulation, incorporating the activities of the previous WPPS into those of the WPDR (see Annex IV). The current Working Party is mandated to develop generally applicable disciplines, and may develop disciplines as appropriate for individual sectors or groups of sectors, including professional services.

In the context of the current services negotiations, WTO Members have established a timeframe for negotiations under GATS Article VI:4. Paragraph 7 of the *Guidelines and Procedures for the Negotiations on Trade in Services* states that “Members shall aim to complete negotiations under Article VI:4 (...) prior to the conclusion of negotiations on specific commitments”. Under the *Doha Development Agenda*, Members have set the deadline of 1 January 2005 for the specific commitments negotiations and the whole single undertaking.

The *Disciplines on Domestic Regulation in the Accountancy Sector* are rather concise, comprising twenty-six paragraphs in four pages. They are divided into eight sections, i.e.: Objectives, General Provisions, Transparency (five paragraphs), Licensing Requirements (six paragraphs), Licensing Procedures (five paragraphs), Qualification Requirements (three paragraphs), Qualification Procedures (three paragraphs) and Technical Standards (two paragraphs).

The main elements of the accountancy disciplines, relative to the current Article VI:4 provisions, are found in paragraphs one, two, five, and six. Paragraph one, for example, confirms that that Article VI disciplines are separate and distinct from measures under GATS Articles XVI and XVII. Paragraph two is the most important element of the disciplines, as it mandates a “necessity test” for all applicable regulatory measures, i.e. the requirement that regulatory measures shall not be more trade-restrictive than necessary to fulfil a specified legitimate objective. Examples of such legitimate objectives mentioned in the disciplines are the protection of consumers (including all users of accounting services and the public generally), the quality of the service, professional competence and the integrity of the profession. In paragraph five, WTO Members are required to explain upon request the specific objectives intended by their accountancy regulations. In paragraph six, WTO

Members are asked to provide an opportunity for trading partners to comment upon proposed accountancy regulations, and to give consideration to such comments.

Other important provisions of the accountancy disciplines include the requirement in paragraph nine that WTO Members consider less trade restrictive alternatives to residency requirements, the requirement in paragraph 15 for reasonable documentation requirements, and the requirement in paragraph 19 that account be taken of qualifications earned abroad.

ANNEX I

WORLD TRADE ORGANIZATION

S/L/64
17 December 1998

(98-5140)

Trade in Services

DISCIPLINES ON DOMESTIC REGULATION IN THE ACCOUNTANCY SECTOR

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. Legitimate objectives are, *inter alia*, the protection of consumers (which includes all users of accounting services and the public generally), the quality of the service, professional competence, 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 (i.e. governmental or non-governmental entities responsible for the licensing 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:

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

- (a) where applicable, information describing the activities and professional titles which are regulated or which must comply with specific technical standards;
- (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; 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, publicly available and objective.

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.

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

VIII. TECHNICAL STANDARDS

25. Members shall ensure that measures relating to technical standards are prepared, adopted and applied only to fulfil legitimate objectives.

26. In determining whether a measure is in conformity with the obligations under paragraph 2, account shall be taken of internationally recognized standards of relevant international organizations² applied by that Member.

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;

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.

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.

- (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.

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.

ANNEX II

**WORLD TRADE
ORGANIZATION**

S/L/63
15 December 1998

(98-5102)

Trade in Services

DECISION ON DISCIPLINES RELATING TO THE ACCOUNTANCY SECTOR

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

The Council for Trade in Services,

Having regard to the Decision on Professional Services adopted by the Council on 1 March 1995 (S/L/3) and the recommendations of the Working Party on Professional Services contained in document S/WPPS/4.

Decides as follows,

1. To adopt the text of the Disciplines on Domestic Regulation in the Accountancy Sector contained in document S/WPPS/W/21. These disciplines are to be applicable to Members who have entered specific commitments on accountancy in their schedules.
 2. 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).
 3. Commencing immediately and continuing until the formal integration of these disciplines into the GATS, Members shall, to the fullest extent consistent with their existing legislation, not take measures which would be inconsistent with these disciplines.
-

ANNEX III

Job No. 6496

Working Party on Professional Services

25 November, 1998

DISCUSSION OF MATTERS RELATING TO ARTICLES XVI AND XVII OF THE GATS IN CONNECTION WITH THE DISCIPLINES ON DOMESTIC REGULATION IN THE ACCOUNTANCY SECTOR

Informal Note by the Chairman

1. For the purpose of transparency, this Note explains the method by which the Working Party on Professional Services (WPPS) pursued its work with respect to the question of the types of measures it would address in creating the disciplines in the accountancy sector. For the avoidance of any doubt, it is emphasised that this Note has no legal status.
2. In the course of work to develop multilateral disciplines on domestic regulation in the accountancy sector, pursuant to paragraph 4 of Article VI of the GATS, the WPPS addressed a wide range of regulatory measures which have an impact on trade in accountancy services. In discussing the structure and content of the new disciplines, it became clear that some of these measures were subject to other legal provisions in the GATS, most notably Articles XVI and XVII. It was observed that the new disciplines developed under Article VI:4 must not overlap with other provisions already existing in the GATS, including Articles XVI and XVII, as this would create legal uncertainty. For this reason, a number of the suggestions for disciplines were excluded from the text.
3. Although it was not in the mandate of the WPPS to provide an interpretation of GATS provisions, the important relationship between the new disciplines and Articles XVI and XVII was noted. While these two Articles relate to the scheduling of specific commitments on measures falling within their scope, the disciplines developed under Article VI:4 aim at ensuring that other types of regulatory measures do not create unnecessary barriers to trade. It has been noted that Article XVI (Market Access) covers the categories of measures referred to in paragraph 2 (a) to (f), whether or not any discrimination is made in their application between domestic and foreign suppliers. Article XVII (National Treatment) captures within its scope any measure that discriminates - whether *de jure* or *de facto* - against foreign services or service suppliers in favour of like services or service suppliers of national origin. A Member scheduling commitments under Articles XVI and XVII has the right to maintain limitations on market access and national treatment and inscribe them in its schedule. On the other hand, the disciplines to be developed under Article VI:4 cover domestic regulatory measures which are not regarded as market access limitations as such, and which do not in principle discriminate against foreign suppliers. They are therefore not subject to scheduling under Articles XVI and XVII. However, it is also recognized that for some categories of measures the determination as to whether an individual measure falls under Article VI:4 disciplines or is subject to scheduling under Article XVII will require careful consideration.
4. The following types of measures affecting trade in accountancy services were raised by some Members as examples of those which may be subject to negotiation and scheduling under Articles XVI and XVII:

- * Restrictions relating to the number of foreign accountants that can be employed, the number of new licences to be issued, the legal form of establishment and the ownership of firms.
- * Discriminatory requirements and procedures relating to the licensing of foreign individuals and the establishment of natural persons and legal persons in the accountancy sector, including the use of foreign and international firm names. Discriminatory elements which set prior conditions unrelated to the ability of the supplier to provide the service when preparing, adopting or applying licensing requirements.
- * Discriminatory residency requirements or requirements for citizenship, including those required for sitting examinations related to obtaining a licence to practice. Discriminatory requirements for membership of a particular professional body as a prior condition for application.
- * Discriminatory treatment of applications from foreign service suppliers vis-à-vis domestic applications including: criteria relating to education, experience, examinations and ethics; the overall degree of difficulty when testing competence of applicants; the need for in-country experience before sitting examinations.

5. The above mentioning of these types of measures does not prejudice future negotiations, which are mandated under Article XIX of the GATS.

ANNEX IV

WORLD TRADE ORGANIZATION

S/L/70
28 April 1999

(99-1717)

Trade in Services

DECISION ON DOMESTIC REGULATION

Adopted by the Council for Trade in Services on 26 April 1999

The Council for Trade in Services,

Acting pursuant to Article IV of the Agreement establishing the World Trade Organization and Article XXIV of the General Agreement on Trade in Services (GATS),

Having regard to paragraph 4 of Article VI of the GATS,

Having regard to the Decision on Professional Services adopted by the Council on 1 March 1995 (S/L/3),

Having regard to the Decision on Disciplines relating to the Accountancy Sector adopted by the Council on 14 December 1998 (S/L/63),

Recognising the importance of domestic regulation in pursuing national policy objectives,

Desiring to ensure that measures relating to domestic regulation do not constitute unnecessary

barriers to trade in services,

Decides as follows,

1. A Working Party on Domestic Regulation shall be established and the Working Party on Professional Services shall cease to exist.
2. In accordance with paragraph 4 of Article VI of the GATS, the Working Party shall develop any necessary disciplines to ensure that measures relating to licensing requirements and procedures, technical standards and qualification requirements and procedures do not constitute unnecessary barriers to trade in services. This shall also encompass the tasks assigned to the Working Party on Professional Services, including the development of general disciplines for professional services as required by paragraph 2 of the Decision on Disciplines Relating to the Accountancy Sector (S/L/63).
3. In fulfilling its tasks the Working Party shall develop generally applicable disciplines and may develop disciplines as appropriate for individual sectors or groups thereof.
4. The Working Party shall report to the Council with recommendations no later than the conclusion of the forthcoming round of services negotiations.

ANNEX V

**LISITING OF INTERNATIONAL PROFESSIONAL SERVICES ORGANIZATIONS
TO BE CONTACTED BY THE WPDR**

General organizations

- * International Organization for Standardization (ISO)
- * World Union of Professions (UMPL)

Legal services

- * International Association for the Protection of Industrial Property (AIPPI)
- * International Bar Association (IBA)
- * International Federation of Industrial Property Attorneys (FICPI)
- * International Law Association (ILA)
- * International Union of Lawyers (UIA)
- * International Union of the Latin Body of Notaries (UINL)

Other accounting services

- * International Actuarial Association
- * International Valuation Standards Committee (IVSC)

Architectural services

- * International Union of Architects (UIA)

Engineering services, integrated engineering services

* International Federation of Consulting Engineers (FIDIC)

* World Federation of Engineering Organizations (WFEO)

Urban planning and landscape architectural services

* International Federation of Surveyors (FIG)

Medical and dental services

* FDI World Dental Federation (FDI)

* World Council of Optometry (WCO)

* World Medical Association (WMA)

Veterinary services

* World Veterinary Association (WVA)

Services provided by midwives, nurses, physiotherapists and para-medical personnel

* International Council of Nurses (ICN)

* World Confederation for Physical Therapy (WCPT)

* World Federation of Occupational Therapists (WFOT)

Other

* International Association of Medical Laboratory Technologists (IAMLT)
