

**COMMUNICATION FROM THE SEPARATE CUSTOMS TERRITORY OF TAIWAN,
PENGHU, KINMEN AND MATSU**

Definitions of Qualification Requirements, Qualification Procedures, Licensing Requirements,
Licensing Procedures and Technical Standards

The following communication, dated 6 October 2005, from the delegation of Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, is being circulated to the Members of the Working Party on Domestic Regulation.

I. INTRODUCTION

1. Certain Members, including the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, consider that clearer definitions of the terms "qualification requirements", "qualification procedures", "licensing requirements", "licensing procedures" and "technical standards" under GATS Article VI Domestic Regulations would be beneficial to the current negotiations on developing disciplines in domestic regulations. In the note S/WPPS/W/9, the Secretariat provided interpretations and examples of qualification requirements/procedures, licensing requirements/procedures and technical standards, which are helpful in developing a workable comprehensive definition of these terms.¹ A number of Members have also added to the discussion by offering various suggested definitions and clarifications on the nature of these terms. Members have also contributed and discussed numerous examples of measures under each category in Annex I of JOB(02)/20/Rev.10.

2. In this paper, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu builds upon these previous papers and proposes definitions on the terms "qualification requirements", "qualifications procedures", "licensing requirements", "licensing procedures" and "technical standards" for discussion by Members. These preliminary views are offered without prejudice to our final position on this issue in the services negotiations.

II. DISCUSSION

3. Qualification requirements, licensing requirements and technical standards seem to overlap to a significant degree. Qualification and licensing requirements are both necessary preconditions to the provision of a service, which all seem to be aimed at ensuring the quality of the service provided. In our view, in order to differentiate among the three, the following general categorizations derived from prior discussions can serve as a good starting point:

- (a) Qualification requirements tend to be requirements concerning capability to be met by the service supplier prior to being authorized to practice;
- (b) Licensing requirements tend to be requirements for obtaining a license or a formal authorization to provide a service, which are stipulated by licensing authorities in

¹ The Relevance of the Disciplines of the Agreements on Technical Barriers to Trade (TBT) and on Import Licensing Procedures to Article VI.4 of the General Agreement on Trade in Services, Note by the Secretariat, S/WPPS/W/9, pp. 5, 6.

order to meet public objectives such as quality of service and consumer protection;
and

- (c) Technical standards tend to establish practical rules according to which the particular service is to be supplied, with a focus on characteristics of the service itself rather than the suppliers.

We note that one of the issues regarding technical standards is whether voluntary standards should be included in the disciplines. In our view, this issue is best suited to be discussed in the development of disciplines in domestic regulations rather than in our current discussion on definitions. Therefore, we take no position on this issue here.

4. The above categorizations can be further refined. First, with regard to technical standards, the above characterization may be too limited. In addition to focusing only on the service itself, technical standards can also relate to how a service supplier is to perform the service. The two cannot be easily separated. Therefore, we do not see the usefulness in including the focus on the characteristics of the service itself in the definition. With regard to international standards, they may exist and may be relevant. However, the application of these standards is subject to discussions in the development disciplines, rather than in the definition.

5. Second, licensing requirements are generally requirements that go beyond the ability of the service supplier to provide adequate service to consumers, which the service supplier has to actively do or fulfil prior to obtaining the license or authorization. These requirements are not necessarily country-specific, but may be aimed at ensuring specific public objectives such as consumer protection or quality control. Failure to meet these requirements do not imply any inability on the part of the supplier to provide the service, but may affect the quality of the service or rights of consumers. It is worth noting that the satisfaction of qualification requirements may be a licensing requirement in itself. Other licensing requirements may also include: establishment or residency requirement, membership to a professional association, professional indemnity insurance requirement, or minimum capital requirement.

6. Third, qualification requirements generally concern directly the ability of natural persons to perform the service in a specific country, region or market. Meeting these requirements ensures a certain minimum level of competency, though not necessarily quality. In order to clearly delineate the differences between qualification requirements and licensing requirements, it may be useful to limit the scope of qualification requirements as applicable to natural persons only. In terms of the sequence of events leading to the service provider commencing its service, preliminary qualification requirements must be met before either licensing requirements or technical standards come into play, although there may be qualification requirements that obligate the natural person to maintain a certain level of competence through periodic re-certification, re-examination, or additional education. Qualification requirements may include: education, examination or certification, experience, practical training, and specific skills such as language.

7. With regard to qualification and licensing procedures, we believe that as long as the definitions of qualification and licensing requirements are clear, the procedures relating to these requirements can then be readily defined.

8. The following table may be helpful in illustrating the differences:

Requirements on the Service Suppliers		Requirements on the Service or Supplier
Qualification Requirements	Licensing Requirements	Technical Standards
<ul style="list-style-type: none"> ● Education ● Examination/certification ● Experience ● Practical training ● Language skills 	<ul style="list-style-type: none"> ● Satisfaction of qualification requirements ● An establishment or residency requirement ● Membership to an association ● Professional indemnity insurance ● Minimum capital requirement 	<ul style="list-style-type: none"> ● Standards according to which the service is to be supplied or performed by the supplier

Members may also wish to consult Annex I of JOB(02)/20/Rev.10 for more examples. However, we note that the examples contained in that document do not reflect the consensus of Members, and given the proposed definitions below, some examples may need to be categorized differently.

III. PROPOSED DEFINITION

9. In sum, we may suggest the following definitions:

- (i) *Qualification requirements: requirements on natural persons that directly relate to the ability to perform a particular service, the fulfilment of which ensures a certain minimum level of knowledge, skills, and competence;*
- (ii) *Qualification procedures: procedures related to the fulfilment and administration of qualification requirements;*
- (iii) *Licensing requirements: requirements on the service supplier for obtaining a license, authorization, permit or permission that go beyond the ability of service suppliers to provide a or the service;*
- (iv) *Licensing procedures: procedures related to the fulfilment and processing of licensing requirements.*
- (v) *Technical standards: standards according to which the service is to be supplied or performed by the service supplier;*