

# CURRENT DEVELOPMENTS REGARDING THE GATS AND LEGAL SERVICES: THE HONG KONG MINISTERIAL CONFERENCE AND THE AUSTRALIAN DISCIPLINES PAPER

by Laurel S. Terry

**T**he General Agreement on Trade in Services (GATS) was the first world trade agreement to apply to services and includes legal services within its coverage. Because the U.S. is a member of the World Trade Organization (WTO), it is bound by the provisions of the GATS. For background information about the GATS and legal services, see the author's previous *BAR EXAMINER* articles.<sup>1</sup>

This GATS update discusses two GATS developments that occurred within the past six months. The first development addressed is the December 2005 Hong Kong Ministerial Conference. The second development is the proposed *Disciplines on Domestic Regulation for Legal Services*, which the government of Australia circulated to other WTO Members in September 2005.

By way of background, it is useful to know that by joining the WTO, the U.S. (and all other WTO Members) automatically agreed to be bound by certain provisions of the GATS. Other provisions of the GATS, however, apply only to the extent that a country makes additional promises in a document called its *Schedule of Specific Commitments*. In a *Schedule of Specific Commitments*, a country's commitments are made on a sector-by-sector basis. In 1994, when the U.S. first submitted its *Schedule of Specific Commitments*, it listed legal services as one of the sectors for

which the U.S. made additional commitments. As required by the GATS, the U.S. listed its legal services commitments according to four "modes of supply," or methods by which legal services are delivered (e.g., whether the legal services are delivered in person by the lawyer or virtually, such as by e-mail or fax.)

WTO Member States, including the United States, currently are engaged in two different "tracks" of WTO trade negotiations that apply to legal services. GATS Track 1, which is required by Article XIX of the GATS, involves negotiations by WTO Members to "progressively liberalize" their services trade. These progressive liberalization negotiations are referred to by various different names, including the Doha Round, the Doha Development Agenda, the Doha negotiations, or the market access negotiations. These negotiations, if successful, will result in changes to each WTO Member's *Schedule of Specific Commitments*. Documents related to the Doha negotiations are available on the ABA GATS Track 1 webpage, [http://www.abanet.org/cpr/gats/track\\_one.html](http://www.abanet.org/cpr/gats/track_one.html).

GATS Track 2 involves WTO Members' efforts to develop "any necessary disciplines," as required by GATS Article VI:4. "Disciplines" are, in essence, WTO regulations that would apply to certain U.S. domestic qualification, licensing, and ethics rules that do not discriminate against foreign lawyers.

Rules that apply only to foreign lawyers are not subject to disciplines but are addressed in a country's *Schedule of Specific Commitments*.<sup>2</sup> Theoretically, if a complaint were filed by another country against a U.S. rule that regulated the legal profession, the WTO Appellate Body could have jurisdiction to decide whether that U.S. rule was subject to any WTO Disciplines and whether that rule was inconsistent with those WTO Disciplines. No such WTO Disciplines have yet been adopted. But if such disciplines were adopted and if the Appellate Body ever found that a U.S. legal services rule was inconsistent with such disciplines, then the GATS would authorize retaliatory trade sanctions as a remedy.

In 1998, WTO Members agreed upon a set of disciplines for the accountancy sector. WTO Members currently are in the process of deciding: (1) whether to extend these "Accountancy Disciplines" to other service sectors, including legal services; (2) whether to develop separate disciplines specifically for legal services; or (3) whether to adopt an entirely new set of disciplines that would apply to all services sectors. Documents related to the GATS disciplines issue are available on the ABA GATS Track 2 Webpage, [http://www.abanet.org/cpr/gats/track\\_two.html](http://www.abanet.org/cpr/gats/track_two.html).

It is against this background that the two most recent GATS developments should be considered:

## THE DECEMBER 2005 WTO HONG KONG MINISTERIAL MEETING

The treaty creating the WTO requires that a "ministerial conference" be held at least once every two years.<sup>3</sup> During December 13-18, 2005, WTO Members, including the U.S., held their Sixth Ministerial Conference in Hong Kong.<sup>4</sup>

The results of the December 2005 Hong Kong Ministerial Conference were memorialized in a

document called the *Doha Work Programme, [Hong Kong] Ministerial Declaration*.<sup>5</sup> This document went through five revisions before it was adopted at the close of the Hong Kong conference.<sup>6</sup> The topic of "services" is covered in paragraphs 25-27 of this document and in Annex C (at pages 29-34).

The first of the three "services" paragraphs in the *Hong Kong Ministerial Declaration* acknowledges the authority of WTO Member States to regulate.

The negotiations on trade in services shall proceed to their conclusion with a view to promoting the economic growth of all trading partners and the development of developing and least-developed countries, and with due respect for the right of Members to regulate.

That paragraph continues by referring to several WTO documents that set forth the parameters and objectives of the Doha negotiations. The second services paragraph focuses on the concerns of developing and least-developed countries. Although it urges all Members to achieve a progressively higher level of liberalization of trade in services, it notes that there must be flexibility for developing countries and that members shall take into account the size of economies and sectors (both overall and in particular sectors) and the difficulties these countries face. The third services paragraph in the *Hong Kong Ministerial Declaration* states, *inter alia*, that WTO Members are "determined to intensify the negotiations in accordance with the above principles and the Objectives, Approaches, and Timelines set out in Annex C, with a view to expanding sectoral and modal coverage of commitments and improving their quality." This means that WTO Members agreed to intensify their negotiations in an effort to expand the number of service sectors listed on WTO Members' *Schedules of Specific Commitments* and

to expand the “modes of supply” in which commitments were made.

Annex C of the *Hong Kong Ministerial Declaration* begins with a section entitled “Objectives.” This “Objectives” section consists of five paragraphs. It begins by identifying particular kinds of barriers for Modes 1-4 that WTO Members should strive to eliminate. The second point in the Objectives section is a statement that during the negotiations, the sectoral and modal objectives identified by Members may be considered. The footnote to this sentence cites the objectives contained in an attachment to the WTO Committee Chair’s report, but states that the attachment has no legal standing. The third paragraph in the Objectives section requires WTO Members to consider plurilateral requests, but does not require them to enter into such negotiations. With plurilateral requests, several WTO Members join together to present joint requests to a selected group of WTO Members. Plurilateral requests have not been the norm in the ongoing GATS negotiations. The norm has been request-offer negotiations, in which one WTO Member submits its requests for liberalization to another WTO Member. That WTO Member then responds with its offer, which responds collectively to the requests it has received.

The Objectives section also includes several paragraphs devoted to efforts to help least-developed countries conclude the Doha negotiations. Finally, the Objectives section states that Members shall develop disciplines on domestic regulation

before the end of the negotiations. This means that WTO Members, including the U.S., have agreed to try to reach agreement about GATS Track 2 Disciplines by December 2006.

AS NEWS AGENCIES REPORTED FROM HONG KONG IN DECEMBER, THERE WERE SIGNIFICANT DISAGREEMENTS AMONG WTO MEMBERS DURING THE WTO’S SIXTH MINISTERIAL CONFERENCE. ALTHOUGH AGRICULTURE WAS A KEY POINT OF DISAGREEMENT, SERVICES ALSO PROVIDED A MAJOR POINT OF CONTENTION.

The “Approaches” section of Annex C explains that the “request-offer” process will remain the main mode of negotiations, but endorses the use of plurilateral negotiations. The Approaches section also includes a paragraph on assisting least-developed countries with their negotiations.

The “Timelines” section of Annex C sets forth the timetable to conclude the Doha negotiations. According to this document, the plurilateral requests described above should be submitted by February 28, 2006, or as soon as possible thereafter. Annex C also provides that a second round of revised offers shall be submitted by July 31, 2006, and that the final draft schedules of commitments shall be submitted by October 31, 2006.

As news agencies reported from Hong Kong in December, there were significant disagreements among WTO Members during the WTO’s Sixth Ministerial Conference. Although agriculture was a key point of disagreement, services also provided a major point of contention. Before the Hong Kong meeting, the EU had proposed a quantitative approach to services offers, in which there would be quantitative benchmarks that would set a certain number or percentage of service sectors each member should commit.<sup>7</sup> Developing countries objected to this approach.<sup>8</sup> They also objected to some of the

content of Annex C, which they did not believe had been agreed to by all Members. As a result of these objections, the *Hong Kong Ministerial Declaration* was amended to make it clear that the list of negotiating objectives had no legal standing. Developing countries also objected to the efforts to impose plurilateral negotiations; the final *Hong Kong Ministerial Declaration* requires developing countries to “consider” such plurilateral negotiation requests, but it does not require them to engage in such negotiations, as the first draft had required.

In my view, the most important results from the Hong Kong Ministerial Conference are: (1) the fact that the Doha Round negotiation did not collapse; (2) the very short timetable that was set to conclude the Doha Round negotiations; (3) the fact that WTO Members seem committed to developing an additional set of GATS Track 2 domestic regulation disciplines; (4) the fact that developing countries are now flexing their muscles and appear resistant to some developed countries’ efforts to further liberalize trade in services; (5) the fact that some countries likely will join together for plurilateral legal services negotiations; and (6) the documents that were issued in preparation for the Hong Kong Ministerial Conference.

As noted above, one of the most important results of the Hong Kong Ministerial Conference was the documentation that was prepared and circulated before the meeting. These preparatory documents included reports prepared by the appropriate WTO

committee chairs regarding, respectively, GATS Track 1 developments and GATS Track 2 (“disciplines”) developments.<sup>9</sup>

The GATS Track 1 Chair’s Report was interesting, among other reasons, because it identified the

legal services objectives that individual WTO Members had identified.<sup>10</sup> The list of legal services objectives was approximately one page long, and addressed both the scope of commitments and limitations for reduction or elimination. This list of objectives undoubtedly is based in part on a document that the U.S. jointly submitted with eight other countries. This U.S.-supported document, which was cited in the GATS Track 1 Chair’s Report, is entitled *Legal Services—Objectives for Further Liberalization and Limitations to be Removed*.<sup>11</sup>

(The only other legal services paper cited in the GATS Track 1 Report was the *Joint Statement on Legal Services*, which was a legal services classification paper that the U.S. jointly signed with nine other countries in February 2005.)<sup>12</sup>

The GATS Track 2 Chair’s Report indicates that WTO members are committed to developing disciplines by the end of the Doha Round. The Chair’s Report included as an attachment a three-page document that lists “Possible Elements for Article VI:4 Disciplines.” Based on the Chair’s Report, it looks like this list currently functions as the disciplines template from which WTO Members are operating; these items could become regulations against which certain U.S. legal services rules would be measured. Given the Doha negotiations timetable, if U.S. bar

GIVEN THE DOHA NEGOTIATIONS TIMETABLE, IF U.S. BAR ASSOCIATIONS, REGULATORS, OR LAWYERS HAVE ANY OBJECTIONS TO ANY OF THE LISTED “POSSIBLE ELEMENTS,” IT WOULD BE PRUDENT TO NOTIFY THE U.S. TRADE REPRESENTATIVE OF THESE OBJECTIONS SOONER, RATHER THAN LATER.

associations, regulators, or lawyers have any objections to any of the listed “Possible Elements,” it would be prudent to notify the U.S. Trade Representative of these objections sooner, rather than later. In addition to the WTO’s list of possible disciplines elements, the GATS Track 2 Chair’s Report also indicates that the U.S. circulated a document to other WTO Members entitled “*Transparency Disciplines in Domestic Regulation*.” If and when this U.S. document becomes publicly available, it undoubtedly would be prudent of U.S. lawyers to notify the USTR of any objections they have to the U.S.’s proposed disciplines.

### AUSTRALIA’S PROPOSED “DISCIPLINES” FOR DOMESTIC REGULATION IN THE LEGAL SERVICES SECTOR

In addition to considering disciplines based on the WTO’s list of “Possible Elements,” WTO Members also are considering whether to adopt a special set of disciplines specifically designed for the legal profession. In September 2005, Australia submitted to other WTO Members a paper entitled *Development of Disciplines on Domestic Regulation for the Legal and Engineering Sectors*.<sup>13</sup> This paper was submitted pursuant to GATS Article VI:4, which requires WTO Members to develop “any necessary disciplines.” Much, but not all, of the Australian legal services disciplines proposal is similar to the International Bar Association’s (IBA) WTO Disciplines resolution.<sup>14</sup> Excerpts from the Australian document appear at the end of this article. I recommend that U.S. bar associations, regulators, and lawyers carefully consider the Australian legal services disciplines proposal and advise the USTR concerning two issues related to the Australian proposal: (1) whether they support having disciplines specific to legal services; and (2) whether they have concerns about any of the provisions in the Australian proposal.

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In sum, there have been significant developments related to the GATS and legal services within the past six months. Based on these developments, it appears that the current GATS negotiations could come to a resolution by the end of 2006. Accordingly, U.S. regulators, bar associations, and lawyers should follow these developments closely. ■

### ENDNOTES

1. See 71 BAR EXAMINER 2:25 (May 2002), 71 BAR EXAMINER 4:20 (Nov. 2002), 72 BAR EXAMINER 3:27 (Aug. 2003), 73 BAR EXAMINER 1:38 (Feb. 2004), 73 BAR EXAMINER 3:34 (Aug. 2004), 75 BAR EXAMINER 1:43 (Feb. 2005). These BAR EXAMINER articles are available on the “articles” page of the GATS website of the ABA Center for Professional Responsibility, which is available at <http://www.abanet.org/cpr/gats/articles.html> (last visited Jan. 12, 2006).
2. I find it exceedingly difficult to determine which U.S. lawyer regulatory provisions would be subject to any WTO disciplines (and thus subject to the authority of the WTO Appellate Body). For more information on this issue, see Laurel S. Terry, *But What Will the Accountancy Disciplines Apply To? Distinguishing Among Market Access, National Treatment and Article VI:4 Measures When Applying the GATS to Legal Services*, 2003 Symposium, PROFESSIONAL LAWYER 83 (2004), available at [http://www.abanet.org/cpr/gats/terry\\_symp\\_iss\\_2003.pdf](http://www.abanet.org/cpr/gats/terry_symp_iss_2003.pdf) (last visited Jan. 12, 2006).
3. Marrakesh Agreement Establishing the World Trade Organization, Art. IV(1), available at [http://www.wto.org/english/docs\\_e/legal\\_e/04-wto\\_e.htm](http://www.wto.org/english/docs_e/legal_e/04-wto_e.htm) (last visited Jan. 12, 2006).
4. See, e.g., WTO, The Sixth WTO Ministerial Conference, available at [http://www.wto.org/english/thewto\\_e/minist\\_e/min05\\_e/min05\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min05_e/min05_e.htm) (last visited Jan. 12, 2006). The previous WTO Ministerial Conferences were: (1) Singapore, Dec. 9–13, 1996; (2) Geneva, May 18 & 20, 1998; (3) Seattle, Nov. 30–Dec. 3, 1999; (4) Doha, Nov. 9–14, 2001; and (5) Cancún, Sept. 10–14, 2003. *Id.*
5. See WTO, *DOHA Work Programme, Ministerial Declaration Adopted on 18 December, 2005*, WT/MIN(05)/DEC (22 Dec. 2005), available at [http://www.wto.org/english/thewto\\_e/minist\\_e/min05\\_e/final\\_text\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm) (last visited Jan. 30, 2006).
6. All five versions are available on the WTO’s webpage for the Hong Kong Ministerial Conference. See WTO, The Sixth Ministerial Conference, available at [http://www.wto.org/english/thewto\\_e/minist\\_e/min05\\_e/min05\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min05_e/min05_e.htm) (last visited Jan. 10, 2006). The drafts were dated November 26, 2005, December 1, 2005, December 7, 2005, December 17, 2005, and

the final version, which is dated December 18, 2005, and cited *supra* note 5.

7. WTO Council for Trade in Services—Special Session, *Communication from the European Communities and Its Member States—Elements for Complementary Approaches in Services*, TN/S/W/55 (27 Oct. 2005).
8. See GATS Track 1 Chair’s Report, *infra* note 9, at ¶9, which stated:

A number of Members stated that numerical targets would help to translate a high level of ambition into meaningful commitments for services in the round. Several Members indicated that inclusion of numerical targets in the text of the Ministerial Declaration would be necessary. Many Members expressed strong reservations about numerical targets, particularly in terms of their compatibility with the GATS and the Negotiating Guidelines, and considered that these proposals were no longer a basis for discussion. Given that the gap between positions remains too wide to be bridged, I have not included a reference to numerical targets in the draft text. It will therefore be up to Members to consider, at the TNC level or above, whether this issue should be pursued further.

The minutes of the WTO meetings make it clear that developing countries led the objections to this proposal.

9. These documents are entitled WTO Council for Trade in Services, Special Session, *Report by the Chairman to the Trade Negotiations Committee*, TN/S/23 (28 Nov. 2005) available at <http://docsonline.wto.org/DDFDocuments/t/TN/S/23.doc> [hereafter GATS Track 1 Chair’s Report], and WTO Working Party on Domestic Regulation, *Report of the Chairman of the Working Party on Domestic Regulation to the Special Session of the Council for Trade in Services*, JOB(05)/280 (15 Nov. 2005) available at [http://www.wto.int/english/thewto\\_e/minist\\_e/min05\\_e/job05\\_280\\_e.doc](http://www.wto.int/english/thewto_e/minist_e/min05_e/job05_280_e.doc) [hereafter GATS Track 2 Chair’s Report].
10. GATS Track 1 Chair’s Report, *supra* note 9, at pp. 11-12.
11. *Id.* at p. 24 (citing WTO Council for Trade in Services, Special Session, *Communication from Australia, Canada, Chile, the European Communities, Japan, New Zealand, Switzerland, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and the United States, Legal Services—Objectives for Further Liberalization and Limitations to Be Removed*, JOB(05)/276 (7 November 2005)). Because the *Legal Services—Objectives* document is classified as a WTO “job,” it is not publicly available. It has, however, been circulated to some bar associations. The author has been informed that this document currently is undergoing revisions and will be discussed during the February 2006 GATS negotiations in Geneva.
12. GATS Track 1 Chair’s Report, *supra* note 9, at p. 24 (citing WTO Council for Trade in Services, Special Session, *Communication from Australia, Canada, Chile, the European Communities, Japan, Korea, New Zealand, Singapore,*

Switzerland, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and the United States, *Joint Statement on Legal Services*, TN/S/W/37 (24 February 2005), available at [http://www.abanet.org/cpr/gats/final\\_statement.pdf](http://www.abanet.org/cpr/gats/final_statement.pdf) (last visited Jan. 12, 2006)). This *Joint Statement on Legal Services* was based in large part on the Terminology Resolution of the International Bar Association. For more information about the IBA resolution, see Laurel S. Terry, *Lawyers, GATS, and the WTO Accountancy Disciplines: The History of the WTO’s Consultation, the IBA GATS Forum and the September 2003 IBA Resolutions*, 22 PENN STATE INT’L L. REV. 695 (2004), available at <http://www.abanet.org/cpr/gats/articles.html> (last visited Jan. 12, 2006)).

13. The full title of this document is WTO Council for Trade in Services, *Communication From Australia, Development of Disciplines on Domestic Regulation for the Legal and Engineering Sectors*, S/WPDR/W/34 (5 Sept. 2005), available at [http://www.abanet.org/cpr/gats/aus\\_disp.pdf](http://www.abanet.org/cpr/gats/aus_disp.pdf) (last visited Jan. 12, 2006).
14. In 2002, the WTO asked the IBA to identify any changes that would be needed before the Accountancy Disciplines could be applied to legal services. For more information on this issue and a copy of the relevant documents, see Terry, *Lawyers, GATS, and the WTO Accountancy Disciplines*, *supra* note 12.



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# EXCERPTS FROM AUSTRALIA'S DEVELOPMENT OF DISCIPLINES ON DOMESTIC REGULATION FOR THE LEGAL AND ENGINEERING SECTORS

## II. GENERAL PROVISIONS

2. Members shall ensure that measures not subject to scheduling under Articles XVI or XVII of the GATS, 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 legal services. For this purpose, Members shall ensure that such measures are not more trade-restrictive than necessary to fulfill a legitimate objective. In this context, 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, Members recognise that these core values are given consideration when developing regulations that have a direct impact on the operations of the legal profession. Legitimate objectives are, *inter alia*, the protection of consumers (which includes all users of legal services and the public generally), the quality of the service, professional competence, the protection of the independence of the profession, the protection of client confidentiality, the avoidance of conflicts of interest, and the integrity of the profession.
3. Members note that regulations should be designed and administered in a manner which promotes the interests of clients and encourages and facilitates the effective delivery of legal services to the fullest extent practicable, consistent with the protection of the public in the host jurisdiction, the maintenance of professional standards, and the independence of the legal profession of the host jurisdiction.
4. Members shall take such reasonable measures as may be available to them to ensure that qualifications, licensing and technical standards requirements and procedures maintained by different levels of government, including by regional and local governments and authorities and non-governmental bodies, are not applied in a way that they make the supply of legal services across the various jurisdictions of the territory of the Member unduly burdensome or expensive.

## III. TRANSPARENCY

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## IV. LICENSING REQUIREMENTS

10. Licensing requirements (i.e. the substantive requirements, other than qualification requirements, to be satisfied in order to obtain or renew an authorisation to practise) shall be pre-established, publicly available and objective and shall include, where applicable, licensing requirements in relation to temporary services provided under the home title of the foreign lawyer, and in relation to permanent establishment under the home title. Members agree that licensing requirements should also take into consideration 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:
  - (a) 'qualification' shall mean the substantive requirements that a lawyer is required to fulfill to obtain a certification or licence, such as education, examination requirements, practical training and experience or language requirements; and
  - (b) 'licensing' shall mean those substantive requirements, other than qualification requirements, with which a lawyer must comply in order to obtain formal permission to supply legal services.
11. Where Members have a 'limited licensing' system, either on its own or together with a 'full licensing' system, to accommodate the provision of legal advisory services in foreign law and international law, Members shall ensure that foreign lawyers are not required to satisfy licensing requirements for a 'full licence', but would be granted a 'limited licence' permitting the practice of foreign and international law if the foreign lawyer:
  - (a) is licensed or authorised to practise law by, and is in good standing with, his or her home regulatory authority;
  - (b) is a person of good character and repute;

- (c) agrees to submit to the Code of Ethics, or its equivalent of the host regulatory authority; and
  - (d) if applicable, carries liability insurance or bond indemnity or other security consistent with domestic law and which, if applicable, is no more burdensome than required by the host regulatory authority of fully licensed local lawyers.
12. 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.
  13. Where membership of a professional organisation is required, in order to fulfill 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 fulfillment of such an objective. Where membership of a professional organisation is required as a prior condition for application for a licence (i.e. an authorisation to practise), the period of membership imposed before the application may be submitted shall be kept to a minimum.
  14. Members shall ensure that the use of firm names is not restricted, save in fulfillment of a legitimate objective.
  15. 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.
  16. 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

17. 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.
18. Application procedures and the related documentation shall be not more burdensome than necessary to ensure that applicants fulfill 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.
19. 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.
20. 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.
21. A licence or practising certificate, once granted, shall enter into effect immediately, in accordance with the terms and conditions specified therein.

## VI. QUALIFICATION REQUIREMENTS

22. A Member shall ensure that, whether or not the Member adopts the 'full licensing' or '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 so that qualifications that are not necessarily the same as those required for lawyers by the host Member, but are equivalent, are recognised. In doing so, equivalent

criteria/standards as applied to domestic recognition of qualifications may prima facie be applied to recognition of foreign qualifications. This does not imply harmonisation of criteria/standards but that unduly burdensome requirements should not be applied to verify foreign qualifications which could result in impairing market access commitments. Members note that foreign lawyers who seek a limited licence to practise only foreign and international law should not be required to obtain additional host Member specific qualifications required of fully licensed local lawyers.

23. The scope of examinations and of any other qualification requirements shall be limited to subjects relevant to the activities for which authorization is sought. Residency in host country or experience in specific locations in host country shall not be made a pre-requisite for eligibility for such examinations unless found necessary for meeting legitimate public objectives.
24. Qualification requirements may include education, examinations, practical training, experience and language skills. Language fluency requirements, when part of examination requirements, should be based on meeting legitimate objectives such as the safety of the consumer, ensuring quality of the services or where working knowledge of the language is essential for practice. Language should not be used as a barrier in itself to prevent foreign service suppliers from sitting in such exams.
25. 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

26. 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.
27. Examinations, if required, shall be scheduled at reasonably frequent intervals, preferably more than once a year, and shall be open for all eligible applicants, including foreign and foreign-qualified applicants. The possibility of using

electronic means for conducting such examinations, wherever feasible, and of providing opportunities for taking such exams in the home country of the foreign services supplier should also be explored having regard also to the extra costs and administrative burdens this might entail amongst all relevant factors. Applicants shall be allowed a reasonable period for the submission of applications.

28. Appeal/review channels should be provided for non-recognition of qualifications. Further, possibility of re-submission of applications and other materials substantiating the case for meeting the qualification requirements should be allowed, including provision for the re-submission of applications for the recognition of qualifications that have been previously rejected. 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.

#### VIII. TECHNICAL STANDARDS

29. Members shall ensure that measures relating to technical standards are prepared, adopted and applied only to fulfill legitimate objectives. In the context of legal services, the term 'technical standards' refers not only to technical standards in the narrow sense, but also to ethical rules and rules of professional conduct.
30. 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 organisations applied by that Member. 