

Working Party on Domestic Regulation

REPORT ON THE MEETING HELD ON 12 MARCH 2002

Note by the Secretariat

1. The Working Party on Domestic Regulation (WPDR) held its fifteenth meeting on 12 March. The agenda for the meeting is contained in Airgram WTO/AIR/1728. Discussion throughout the meeting was based largely on two new Chairperson's Notes (JOB(02)/4, dated 30 January 2002 and JOB(02)/22, dated 7 March 2002).

2. The Chairperson opened the meeting by suggesting that Members reverse the sequencing of the first two items on the agenda, i.e. to have the *Organisation of Future Work* come before the *Development of Regulatory Disciplines under GATS Article VI:4*. Members agreed to the suggestion.

3. Before moving to the substantive items for consideration, the Chairperson noted that, as requested at the previous WPDR meeting, the *Summary of Discussions on the Checklist of Issues for WPDR* had been separated from the Minutes, and circulated separately, as JOB(02)/03 dated 29 January 2002. According to the usual practice, a strikeout version of the *Summary* had been provided at the back of the room for reference.

(a) Organization of Future Work

4. The Chairperson introduced this agenda item by stating that, as Members were aware, paras 14-19 of his Note of 30 January had raised this issue. The WPDR had recently had an informal meeting (on Friday 1 March) so as to provide an opportunity to have an initial exchange of views. This was followed by a further Chairperson's Note, JOB(02)/22, dated 7 March. As mentioned in his latest Note, Members had had a very good exchange of opinions at the informal meeting, and he believed it would be useful to lay out some further thoughts on the organisation of future work in advance of the formal meeting. He then opened the floor for initial comments by Members.

5. The representative of Uruguay, making preliminary comments, stated that Members needed to leave some flexibility to the new Chairperson. Paras 3 and 4 of the latest Note were important, he stated, and Members needed to bear in mind para 7 of the Negotiating Guidelines, i.e. that work under Article VI:4 should be finished before negotiations on specific commitments were concluded. With only about 33 months left to finish work under Article VI:4, it was important to have an exchange of views on the best way to organize the work in order to meet that objective.

6. The Chairperson then proceeded paragraph by paragraph in his latest Note, stating that, in paras 3 and 4, he had observed that there would appear to be a general desire for the Working Party to adopt a more focused approach to its work, and that an important part of this would involve engaging more substantively in a review of the *actual regulatory issues* that related to Article VI:4, including the updated version of the *Examples* paper (*Examples of Measures to be Addressed by Disciplines under GATS Article VI:4*, JOB(02)/20 dated 7 March 2002). In so doing, he believed that it would be very important for the WPDR to actively explore ways to ensure that all Members, particularly developing and least developed, had an opportunity to participate in those discussions.

7. The representative of Thailand stated that her delegation had some reservations about the WPDR reviewing regulatory examples. They wished to first have more responses from Members, and more time for Members, especially developing and least developed, to submit examples. She also asked what the Chairperson meant by the “review” of regulatory issues. The Chairperson replied that, by “review”, he had not meant to imply that any fixed procedures or set outcomes were intended, but instead that Members would focus closely on an examination of the regulatory issues so as to provide greater clarity as to what the disciplines envisaged by Article VI:4 might be able to address.

8. The representative of the European Communities said that, with respect to paras 3 and 4, it was important to keep in mind the timeframe set by the Negotiating Guidelines. On para 4, the EC welcomed the review of measures, as well as the work by the Secretariat.

9. The representative of the United States welcomed the change in focus from the abstract to the more concrete, and said that the updated *Examples* paper was very useful. The U.S. was very open to ideas on how to progress in looking at actual regulatory measures, and believed it would be useful to integrate this process into the ongoing wider work of the WPDR with respect to general issues, necessity and transparency.

10. The U.S. idea, on a preliminary basis, was to look sequentially at categories of regulatory measures, including examining to what extent regulatory measures might not be addressed by existing GATS disciplines. This would include discussing any “grey areas” regarding Article VI:4 and Articles XVI & XVII, as well as examining to what extent Articles XVI & XVII could not address particular regulatory measures. Members could also examine the extent to which existing horizontal rules, including Articles II, III, VIII and IX, might not be able to address such measures, the representative stated. At that point, Members could look at how potential disciplines on transparency and/or necessity could address such problems. Finally, Members could consider whether certain measures were common to many sectors, as well as to discuss the administrative costs and burdens of addressing regulatory barriers. The representative then asked Thailand if their concerns were more related to professional services and the *Synthesis* paper (*Synthesis of Results to Date of the Domestic Consultations in Professional Services (Fifth Draft)*, JOB(01)/162 dated 27 November 2001).

11. The representative of Brazil stated that Members needed to clarify the objectives of the disciplines to be developed, and supported the move away from the abstract to the more concrete. Regarding the U.S. suggestions, he commented, on a preliminary basis, that they seemed to be useful, especially the idea of examining the extent to which Articles XVI & XVII could address particular regulatory measures, which could include issues identified in both the *Examples* paper and the Special Session negotiating proposals. The representative noted that his delegation had made the point earlier that some Special Session proposals, including for accountancy, did not distinguish between Article VI:4 measures and those under Articles XVI & XVII. The representative suggested that Members bear in mind the objectives of the Article VI:4 mandate, i.e. the creation of regulatory disciplines, and avoid extended theoretical discussions. He emphasized that the creation of horizontal disciplines under Article VI:4 was one of the most important issues for the current negotiations.

12. The representative of Hong Kong, China agreed entirely on the need for more focus on the concrete, stating that the listing of regulatory measures was important. He supported the examination of examples in greater detail, and noted there was a readily available pool of examples in the negotiating proposals. The *Synopsis* paper (CTS Special Session, *Synopsis of Negotiating Proposals*, JOB(01)/63 dated 3 May 2001) mentioned many regulatory barriers, he stated, including lack of regulatory transparency, compulsory membership in professional associations, different sub-federal regulations for the recognition of qualifications, excessive fees and overly burdensome documentation requirements. Some negotiating proposals even proposed solutions, he noted, including suggesting additional Article XVIII commitments. The representative wondered whether Members would agree to have the Secretariat extract the regulatory barriers from the *Synopsis*, keeping the sectoral references. He also agreed with revising the *Examples* list in greater detail.

13. The Chairperson asked Members in their interventions to address the issue of having the Secretariat extract the regulatory examples in the *Synopsis*.

14. The representative of Mexico stated that the suggestion in para 4 of the Chairperson's Note was most appropriate, and noted that Members had not yet seriously discussed the measures already identified. In addition, no new examples had been submitted for several months. Regarding objectives, the representative noted that Article VI:4 and Articles XVI & XVII were in different parts of the GATS. Members needed to bear in mind that the objective was the development of disciplines, noting the complementary relationship between Articles III and VI. Comparing what was not covered under Articles XVI & XVII was a good idea, he stated. Members should always think about the horizontal nature of disciplines. The representative emphasized that more focused discussions were required, and supported having the Secretariat integrate more examples, centring on the three VI:4 categories of licensing requirements and procedures, qualification requirements and procedures, and technical standards.

15. The representative of Canada supported the discussion of specific measures, especially those contained in the *Examples* paper, and suggested that it be made a separate sub-item on the agenda. She emphasized that the objective should be to provide a clear understanding of the regulatory measures and restrictions covered by Article VI:4. Her delegation supported and reiterated the need for clear, precise examples of measures not covered by Articles XVI & XVII and not already found in the accountancy disciplines. Canada also supported Hong Kong, China's idea on the review of Special Session proposals, focusing on Article VI:4, as stated by Mexico.

16. The representative of Japan agreed on the need to focus on concrete examples, stating that it would be useful for Members to examine the relevance of the accountancy disciplines and the existing GATS articles, as well as to determine what requirements may be missing. Japan supported the U.S. idea on examining whether a discipline should be horizontally applied, or should be of a more sector-specific nature. Disciplines related to the transparency of regulatory procedures or requirements tended to be more easily applied horizontally, the representative stated, while disciplines related to the appropriateness of a procedure might be of a more sector-specific nature. Regarding Hong Kong, China's idea, Japan felt it would be necessary to "streamline" the procedure for discussing regulatory examples, and to know which documents would be discussed and in what order. The *Examples* paper, the *Synopsis* paper, and S/C/W/97 (*International Regulatory Initiatives in Services*, dated 1 March 1999) were all full of good examples, the representative noted, adding that a new synthesis or a cross-referencing of the relevant Secretariat papers could be useful.

17. The representative of Thailand stated that their concern extended to the regulatory examples. Her delegation was actually not opposed to a review, and Thailand was planning to submit a list of barriers. Thailand also could not yet support Hong Kong, China's idea, because the proposals were mostly from the developed countries. The representative noted that the same situation existed in the CSC, and said that it should be up to Members to submit examples.

18. The Chairperson emphasized that the future progress of the WPDR was in Member's hands. He observed that the regulatory issues confronted by Thailand were probably shared by others, and therefore all Members would benefit from a more focused debate.

19. The representative of Australia agreed with focusing on concrete issues, and said they remained committed to a multilateral focus. The U.S. initiatives were worth considering, she stated, and Australia agreed on the relevance of the accountancy disciplines. The representative also agreed with the idea of "gap analysis", i.e. determining where further work was required. The negotiating proposals did provide important examples, she stated, and having the Secretariat compile examples would be the most efficient method. Australia strongly agreed with Brazil that the VI:4 work was extremely important, and with Uruguay that it was necessary to think ahead to the conclusion of negotiations.

20. The representative of the United States, while welcoming the opportunity to extract from negotiating proposals, noted that the Hong Kong, China idea was similar to an earlier suggestion in the WPDR. The consensus at the time was that individual Members would extract regulatory examples from their negotiating proposals, and the U.S. view was that this should continue to be the case. The representative thanked Thailand for their clarification, and agreed with Australia that “gap analysis” should be an objective for the WPDR.

21. The representative of Chile agreed with the Chairperson’s Note on a more concrete focus, and was open-minded in terms on how to proceed, noting that very few delegations had provided examples to date. The delegation of Nicaragua also agreed that a more specific approach was needed, and supported Hong Kong, China’s idea, stating that it would be helpful for delegations which were currently collecting data on VI:4 issues. They stated it was important to consider horizontal as well as other approaches to creating disciplines.

22. The representative of Hungary shared the view in para 3 of the Chairperson’s Note, stating that the review of regulatory examples, together with Hong Kong, China’s suggestion, would be useful. He urged Members to provide further examples. The representative agreed with the U.S. view of looking at the concrete within the context of the abstract, and with Australia and Japan on the relevance of the accountancy disciplines. He supported Brazil on the importance of the horizontal approach, as well as Uruguay on the importance of the timeframe for concluding negotiations.

23. The representative of the European Communities, on a preliminary basis, welcomed the U.S. suggestion on the integration of examples with regulatory concepts, especially the distinction between measures falling under Article VI:4 and those under Articles XVI & XVII. On Hong Kong, China’s proposal, the EC wished to reflect on the Secretariat role, noting that Members all had the *Synopsis* paper. She agreed that the accountancy disciplines were very relevant. On the *Examples* paper, she noted the negative formulation, e.g. “excessive fees”, and stated that a more neutral formulation was needed.

24. The representative of Switzerland stated that the WPDR needed to work on more concrete issues, and supported the review of regulatory measures based on the *Examples* paper. Hong Kong, China’s idea was interesting, he said, and Members should give increased importance to the accountancy disciplines.

25. The representative of Brazil, regarding the examination of measures mentioned in the negotiating proposals, agreed that the process should be Member-driven, but noted that any Member could raise any measure, including those in other Members’ negotiating proposals. The representative of the United States agreed that any Member could raise anything they wished. With regard to a Secretariat compilation, however, he stated that the view of many delegations was that they should decide whether to raise issues from their negotiating proposals.

26. The representative of India said that his delegation would reflect on the U.S. and Hong Kong, China ideas. He agreed that a more focused approach was needed.

27. The Chairperson summarized by stating that Members had a very timely and useful discussion on the “road ahead” for the WPDR. Members were generally of the view that it was time to take a more focused approach, i.e. to focus more on the regulatory barriers and issues that services suppliers actually faced. The WPDR’s work was an “educational process” for all Members, he stated, noting that Members had raised a number of specific questions that the WPDR might focus upon, including whether Article VI:4 was the most appropriate means for dealing with certain regulatory measures. The more focused approach would be evolutionary, the Chairperson stated, and the debate would therefore follow on that basis. Concerning work for the Secretariat, he noted there was no consensus. It was clear, however, that Members could draw upon any information when making a contribution to the WPDR, in order to get a better grasp of the regulatory issues concerned.

28. The Chairperson continued by noting that, as mentioned in para 5 his Note, Members at the informal meeting had suggested that the *Summary* and the revised *Checklist of Issues* (JOB(01)/92 dated 19 June 2001) be collapsed into one document. The new document would continue to reflect the current views of the Members from both formal and informal discussions, but would not constitute anything else. It would be up to the Members themselves to decide how best to utilise the contents of this document in future discussions.

29. The representative of the European Communities said that the *Checklist* had been very useful, but there was no need to continue updating it as a separate document. She agreed with the suggestion to collapse the two documents. Members then approved the Chairperson's suggestion.

30. The Chairperson, turning to the *Disciplines on Domestic Regulation in the Accountancy Sector* (S/L/64 dated 17 December 1998), as well as the *Guidelines for Mutual Recognition Agreements or Arrangements in the Accountancy Sector* (S/L/38 dated 28 May 1997), stated that para 6 of his Note had observed that the informal discussions had highlighted that it was ultimately up to each Member itself to decide the relevance of these documents to the on-going work in the Working Party. He then observed that para 7 of his Note had raised the question of the Working Party's work on *professional services*, and had attempted to summarize discussions at the informal meeting on 1 March.

31. The representative of India, regarding para 7, noted that the idea of a paragraph by paragraph review of the accountancy disciplines and the *Synthesis* paper had been raised in the Chairperson's Note of 30 January. Delegations had observed that the *Synthesis* paper took into account the views of only certain Members, he stated. India was undertaking consultation with professional associations, and the preliminary results were not very negative, but they felt it was too early to begin discussing the *Synthesis* paper in detail. The representative stated that review of the accountancy disciplines should only take place after review of the *Synthesis* paper had been completed.

32. The Chairperson observed that the *Synthesis* limitations were well known, and said that an examination of the paper could help guide the consultations of those Members that had not yet reported.

33. The delegation of Thailand confirmed their reservations, noting that only four developing countries had responded to date. They wished to see more reports of consultations, as well as a broader range of sectoral coverage. The delegation thanked the Chairperson for the clarification of the issue expressed in para 7, and said they would try to be constructive on the issue. The representative of Malaysia stated that their reservations had been expressed at the informal meeting, and noted that para 7 accounted for this. Para 7 therefore indicated the best way to proceed, he said. The delegation of Canada said they also supported what was suggested in para 7. They were also continuing their domestic consultations.

34. The delegation of Mexico stated that they had believed it was necessary to wait, but were also aware that the initial deadline for reporting was March 2000. Members should consider a tentative date for proceeding, he stated. Mexico very much wished to have more discussion on professional services. More time was unlikely to greatly increase the number of reports, the representative stated, and therefore more flexibility was needed from Members.

35. The representative of Uruguay agreed with Mexico in principle. Deadlines would help to revitalize the process, he stated. There was also the idea of consulting international professional services organizations, he noted, observing that these specialized organizations were likely to have information which could be of benefit. Members would need to reach agreement in this regard as well, he stated.

36. The Chairperson noted there was a sense from Members of the need to be more focused on professional services as well. Although the *Synthesis* could not be representative of Members' views as a whole, due to the limited number of reports, it would be useful for delegates to reacquaint themselves with the thinking of their colleagues, he stated. Members would also need to address the issues raised by Uruguay and Mexico at the next meeting, the Chairperson stated.

(b) Development of Regulatory Disciplines under GATS Article VI:4

37. The Chairperson noted that, at the previous formal meeting on 29 November 2001, the Working Party had traversed a range of issues based upon a previous Chairman's Note. Good progress continued to be made on a number of issues, with discussions continuing to be more focused on the horizontal aspects, as opposed to professional services. In advance of the current meeting, he had presented some further thoughts in a Chairperson's Note, JOB(02)/4, dated 30 January. His intention was to ensure that Members had as fruitful and constructive discussions as possible at this meeting.

(i) *Discussion of Concepts Relating to the Development of Disciplines*

General Issues

38. The Chairperson noted that the first sub-item in this area was the discussion of concepts relating to the development of disciplines. Turning first to *general issues*, he stated there were a number of issues to be addressed, ranging from *examples of actual regulatory issues to federal/sub-federal measures*. Paras 4-10 of his Note had raised a number of questions in relation to these various issues. He then opened the floor for comments.

39. The representative of Japan, with respect to the issue of "onerous visa procedures" and the *scope of Article VI:4* mentioned in para 5, said that VI:4 measures should be directly related to competence, ability to supply the service, and quality of the service, as stated in VI:4 (a) and (b). Therefore, visa procedures would be applicable only if they were directly related to one of those factors. In any case, visa procedures would still be subject to para 4 of the *Annex on Movement of Natural Persons*, he stated.

40. The representative noted that, in the accountancy disciplines, the requirements concerning licensing procedures were not the same as those for qualification procedures. Members therefore needed to be more clear on the distinctions between the two, e.g. with respect to court activities of lawyers. Regarding the application of disciplines, Members should discuss this issue in the future, he stated. As he had noted before, transparency was easier to apply on a horizontal basis. On *federal/sub-federal measures*, Japan believed they should both be subject to the same disciplines.

41. The representative of Brazil, regarding *general issues*, said the foremost issue was the applicability of horizontal disciplines. He reiterated his delegation's earlier view, i.e. that they should apply only where specific commitments had been made. Reasons for this view were the overall structure of Article VI, the fact that the objective of disciplines was to ensure effective market access, and the fact that GATS commitments were made in the sectors selected by Members. Concerning *federal/sub-federal measures*, the representative said that Article I:3(a) should be strengthened, noting that many VI:4 measures were implemented at the sub-federal level. On para 9, concerning the *definition of regulations*, he noted that one delegation had previously raised doubts on the coverage of Article III:3, in the light of Article XXVIII(a). Brazil believed that Article III:3 covered all kinds of measures, **taken at and** all levels of administration.

42. The representative of Hong Kong, China also reiterated his delegation's views regarding applicability. In practice, domestic regulations were imposed independently of market access considerations, i.e. for ensuring good domestic policies. In this respect, regulatory disciplines could

serve the objective of progressive liberalization, he stated. Article VI:4, and Articles XVI & XVII were designed to deal with different aspects of measures. Therefore, there was in principle no logic for VI:4 disciplines to hinge on commitments under Articles XVI & XVII. Disciplines could be seen as precursors to progressive liberalization. The representative's objective was to emphasize that it was still too early to decide on applicability. Regarding *federal/sub-federal measures*, he associated his delegation with Brazil's comments.

43. The representative of the Philippines, while noting that Article VI:4 covered a relatively broad spectrum, was of the view that visa procedures might not be covered. He asked for more clarification of Japan's views. On para 6, his delegation believed application should only be where specific commitments had been made. He appreciated the idea in the Chairman's note that it was up to Members to decide, i.e. on a voluntary basis. On para 7, regarding *administrative burden*, he stated that special and differential (S&D) treatment might be necessary for developing countries. On *federal/sub-federal measures*, he agreed with Brazil with respect to application.

44. The representative of Guyana, regarding para 5, expressed concern that visas were typically required for consumers and services providers from developing countries, but not for developed countries. This was a constraint to the supply of services, he stated, and an issue that must be addressed. On the *scope of Article VI:4*, Guyana agreed that disciplines only applied to specific commitments, but noted the cross-sectoral effects of regulatory measures. In the case of economic needs tests, for example, there were often no legal provisions to underpin the scheduled restrictions. On *federal/sub-federal measures*, the representative noted that sub-federal regions had negotiated as separate entities, e.g. different rules applied in New York and California for engineers. Disciplines must therefore apply at the "ground level", he stated.

45. The representative of Uruguay, on para 5, said that the visa issue in principle went beyond VI:4, and even the GATS. On para 6, he agreed that each Member should decide for themselves, although their legal obligation would only be where there were specific commitments. The issue was now solved, and should be pulled out of the discussions, he stated. On para 7, *administrative burden* was an important issue. S&D treatment should be given further consideration, the representative stated, both in this regard and with respect to domestic regulation in general. On para 10, regarding *federal/sub-federal measures*, the question to be asked was what Members wanted, he said, e.g. full transparency or only partial transparency.

46. The representative of the United States, regarding Japan's comments, said that the visa reference was very interesting, and showed the type of analysis his delegation wished to undertake. He agreed with Japan on the horizontal application of transparency disciplines. The representative thanked Brazil for the clarity of their intervention on Article III:3, and stated that Hong Kong, China had made some very good points on the merits of applying regulatory disciplines. Regarding Guyana's intervention, he noted that visa problems could affect trade interests. He also pointed out that U.S. submissions to the WPDR had not attempted to distinguish between federal and sub-federal measures.

47. The representative of Japan, responding to the Philippines, said they believed visa procedures would not normally fall under Article VI:4, but wondered if they might in certain specific cases. Regarding Uruguay's comments, Japan recognized the right of Members to control the entry of natural persons, but also believed that onerous visa procedures might imply the nullification or impairment of specific commitments.

48. The representative of India, regarding para 6, said that horizontal disciplines under Article VI:4 should be applicable only where there were specific commitments. Regarding *federal/sub-federal measures*, it would be administratively burdensome to extend measures to the sub-federal level, he stated.

49. The representative of Brazil, regarding para 5, agreed that immigration policies were out of the scope of GATS. However, to the extent that visa requirements were related to the granting of a license, such measures might fall under VI:4. Noting that specific provisions existed for other modes of supply, e.g. footnote 8 of the GATS regarding capital movements, he stated that mode 4 visa issues should therefore be taken into account. Regarding Hong Kong, China's intervention, he said that, merits aside, the structure of the GATS agreement, i.e. the positive listing of commitments, was well known, and was beneficial to both developed and developing countries.

50. The representative of Mexico, on para 5, said that, although visa procedures might possibly be related to the granting of a license or qualification for a services supplier, it was not the purpose of Article VI:4 to cover that kind of procedure. Members should not take the issue too far, he stated, otherwise they would get bogged down in lengthy discussions. Members should instead examine what was specifically mentioned in Article VI:4. Regarding para 10, the representative thanked the Secretariat for its Note (JOB(02)/21, dated 7 March 2002), which indicated that the problem was the lack of compliance with existing notification obligations.

51. The delegation of Guyana, without prejudice to their final position, stated they saw the need to distinguish the temporary movement of services consumers and providers from that of permanent migration. With respect to temporary movement, the issue of visas must be addressed, he stated. The delegation of Cuba, on para 6, said they did not feel it was up to each Member to decide applicability on a voluntary basis. On para 7, the delegation stated that *administrative burden* was matter of particular concern, and that S&D treatment would be appropriate in that regard.

52. The representative of Korea, on the visa issue, said it might be related to qualification and licensing requirements. The basic assumption of VI:4, however, was non-discrimination, he stated, but visas were discriminatory measures. The representative agreed with Japan, that there could be non-violation cases.

53. The Chairperson summarized by stating that Members had a quite useful discussion on general issues, and Members had already made an effort to be more focused. A number of delegations had raised specific issues regarding para 5 of his Note concerning visa procedures. Members would need to further discuss this issue, but it had been a good start to a more focused approach. A few delegations had raised the issue of S&D treatment, both in terms of administrative burden and regulatory disciplines in general, and this would obviously require further discussion. The question of the applicability of horizontal disciplines, and the issue of federal/sub-federal measures, had prompted useful interventions, and Members would need to return to these issues at the next meeting.

Necessity

54. The Chairperson then turned to the next group of topics, which was the issue of *necessity*. As Members knew, there were a number of questions and issues raised in relation to this issue, but Members had had limited discussions in recent times. At the previous meeting, he made the observation that the first, and probably most significant, question that the Working Party was considering was the *criteria for the necessity test*, which obviously included the idea of the "*third aspect*". He then opened the floor for further comments on *necessity*.

55. The representative of India agreed that a horizontal necessity test could not be too specific. A panel would examine the objectives of the regulation, and then apply the general necessity test. Governments should decide legitimate objectives for themselves, he stated, and any listing of legitimate objectives could only be illustrative, not exhaustive.

56. The representative of Brazil confirmed his delegation's position that disciplines should involve both transparency and necessity. Transparency alone would not achieve the objectives of the

GATS, he stated. He agreed that the focus should move away from legitimate objectives, which should not be questioned. With respect to determining whether a measure was more trade restrictive than necessary, his delegation was not sure how the proportionality criteria suggested by the EC would work in dispute settlement. The representative said that another issue that should be further discussed was the “third aspect”, i.e. the question of whether a less trade restrictive alternative was available. Economic feasibility, technological feasibility, administrative burden, etc. could be considered, he stated, but it should not be the WTO’s role to determine what measures should be adopted. S&D treatment could also be considered in this regard.

57. The representative of the European Communities agreed that Members had moved away from discussing legitimate objectives. Regarding proportionality, a panel should not assess the validity or appropriateness of any policy objective, she stated, but instead could focus on whether the measure was proportionate to the intended policy objective, taking into account the level of development.

58. The representative of Mexico stated that Members must be aware that regulations were not created for trade purposes in general, and especially not for international trade purposes. Members must therefore be careful about how they approached the necessity issue, he stated, emphasizing that he wished to hear the views of those specialized in analyzing the impact of regulations.

59. The representative of Canada thanked Brazil for mentioning the third aspect, and agreed it might need further discussion. She stated that Canada was continuing to analyze the extent to which the accountancy disciplines might be used as the basis for horizontal disciplines.

60. The representative of the United States noted that each Member had their own prejudices with respect to necessity and transparency, and there was no collective sense of the problems to be addressed and the best means to do so. Members needed to integrate the examination of specific regulatory measures into the discussion, he stated. He noted that the Article VI:4 mandate to develop any necessary disciplines was itself a necessity test.

61. The Chairperson concluded by noting that the more focused approach would necessarily inform the WPDR discussions. Members had a useful discussion of necessity, he stated, with a number of delegations raising important issues that had not recently been discussed.

Transparency

62. The Chairperson moved to the next issue, the question of *transparency*. At the previous meeting, he had observed that the issues of *transparency objectives* and *compliance with existing notification requirements* were currently the primary focus of the Working Party. In his view, it was in these areas that some of the more substantive questions arose as to the possible shape of any transparency disciplines that Members might be able to develop. Once these questions had been clarified, he believed the remaining issues and questions might become somewhat easier to answer.

63. The Chairperson observed that, since the previous meeting, the Secretariat had circulated (as JOB(02)/21, dated 7 March) a brief summary, by sector, of Members’ notifications to date of central and local government measures. He then opened the floor for any comments that delegations wished to make relating to transparency.

64. The representative of Japan stated that possible useful elements for horizontal disciplines from the accountancy disciplines included paras 3, 4, 5, 6, 7, 8+14 combined, 13, and 15 to 18.

65. The representative of Brazil, regarding Japan’s intervention, stated that many of the issues mentioned might not be directly related to transparency. There was very little in the accountancy transparency disciplines not already covered by existing GATS obligations, he stated, and priority should be given to implementation of existing obligations. JOB(02)/21 had several implications, the

representative stated, i.e. that the implementation of Article III:3 requirements had not occurred, and that developing countries had made most of the notifications. The Members concerned should therefore explain why more obligations were needed, he stated, noting Brazil's view that no additional transparency disciplines were needed.

66. The representative of Hong Kong, China agreed that the effective implementation of Article III obligations would go a long way to address transparency issues. He observed that the transparency provisions in the accountancy disciplines required making known not only the relevant measures, but also the rationale behind those measures. His delegation believed that this requirement would be an important element of any horizontal disciplines to be developed under Article VI:4, as it would be crucial for the effective administration of any necessity test. It also illustrated the interdependency between transparency and necessity, he stated.

67. The representative of India, noting that Japan had earlier suggested the introduction of a system for public comments, stated that India had been holding domestic consultations on the transparency provisions of the accountancy disciplines. The preliminary view was that prior comment provisions would cause unnecessarily administrative burden. Overall, India felt that transparency disciplines should not go beyond Article III. The representative supported Brazil's comments against any additional transparency obligations.

68. The representative of Japan, responding to the comments of Brazil and India, acknowledged the importance of the existing Article III obligations, but said that his delegation still felt the need for more precision to make the obligations operational. Consultations with the private sector had revealed many cases where procedures and criteria for granting licenses were unclear and even discretionary. Elements of the accountancy disciplines which could help address this problem, e.g. the provision that requirements must be pre-established, were not necessarily already existent in Article III, the representative stated. More disciplines vis-à-vis services providers were needed, he stated, and not additional requirements for notifications to Geneva.

69. The representative of the United States said that Brazil had raised valid points, and noted that the problem of Article III implementation covered both developed and developing country Members. Further examination of the problem was required, he stated, and it was important to have the correct mix of notifications to the WTO and transparency at the trading level. The latter seemed to provide more value-added, he stated.

70. The representative of Mexico stated there was still a long path to follow on the implementation of Article III. He wondered whether cross-notification provisions in services were the element that was lacking. The representative of the Philippines agreed that the primary problem appeared to be a lack of Article III implementation. He was not sure whether transparency disciplines should oblige Members to directly inform private services suppliers. Instead, the contact and enquiry points should be relevant in this regard, he stated.

71. The representative of Canada emphasized that transparency was a key element. The contents of Article III were substantively different from the transparency elements of the accountancy disciplines, she stated, and there was no overlap or repetition. Publishing promptly should be the way of informing the private sector. Administrative burden was an important issue, the representative stated, and flexibility was required. Regarding sub-federal measures, she noted that Canada had made several notifications.

72. The representative of Uruguay stated that transparency was important for all Members. The level of notifications was low, less than one per Member. Members therefore needed to find the most effective way to achieve transparency, he stated.

73. The Chairperson concluded by stating that the previous speakers had already summarized the main issues. Important topics raised included the objectives of any disciplines to be created, as well as the existing GATS notification requirements. The Secretariat Note had been a catalyst for discussion, he stated, helping to indicate that Article III implementation was a priority issue for Members.

Equivalence and International Standards

74. The Chairperson noted that the last two topics were *equivalence* and *international standards*. He observed that, at the previous meeting, one delegation had indicated that the concepts of equivalence and international standards were very important, especially for developing country Members to increase their trade in services. The key question was what Member saw as the relevance of equivalence and international standards to the development of regulatory disciplines. He then asked whether any delegations wished to make any additional comments.

75. The representative of Thailand stated they were interested in the issue of equivalence, and were consulting domestically on what should be the role of the WPDR in regard to equivalence.

76. The Chairperson concluded discussion under the first agenda sub-item by stating that Members had a useful discussion and exchange of views regarding of concepts relating to the development of disciplines.

(ii) Development of Disciplines for Professional Services

77. The Chairperson observed that the second agenda sub-item was the development of disciplines for professional services. Members had a useful discussion earlier in connection with the issue of the organization of future work, he stated, and noted that professional services were addressed in the *Synthesis* paper prepared by the Secretariat, as well as in his Note of 30 January. He then opened the floor for comments.

78. The representative of Mexico reiterated his earlier statement that professional services were extremely important, and therefore Members should be more objective and precise, including with regard to timeframes. He stated that Mexico was willing to work on the basis of the *Synthesis* paper.

79. The Chairperson stated that the goal of the earlier discussions had been to try to set the road ahead for professional services. Members were attempting to familiarize themselves with the issues concerned, without having any fixed results in mind. The questions of new timeframes and the relationship with international organizations were issues that needed to be addressed.

(c) Date of Next Meeting

80. The Chairperson stated that the next agenda item was the date of the next meeting. In accordance with the usual practice of grouping meetings of the subsidiary bodies close to meetings of the Council for Trade in Services, he suggested that the next meeting again be held during the week just before the next Council and Special Session meetings, i.e. the week beginning 27 May. Members agreed to the Chairperson's suggestion.

(d) Other Business

81. The Chairperson noted there were two topics under this agenda item, which had been raised by himself and Hong Kong, China. He gave the floor first to Hong Kong, China.

82. The representative of Hong Kong, China noted that many delegations had been invited a recent meeting of services experts held in Paris at the OECD concerning domestic regulation. For the

benefit of Members who did not attend as well as for the purpose of transparency, he suggested that, if Members agreed, the WPDR could invite the OECD to summarize the results of the meeting on a non-attributable basis. The Chairperson agreed with Hong Kong, China's suggestion. Members also agreed to invite the OECD to summarize the results of the Paris meeting.

83. As the second item, the Chairperson stated he wished to discuss the status of Working Party documents, without attempting to reach a conclusion at the current meeting. He observed that certain informal WPDR documents, including the *Examples* paper and his Chairperson's Notes, could be very useful but were restricted, and suggested that Members explore the possibility of de-restricting informal documents, or allowing wider dissemination.

84. The representative of Australia asked if there was a listing of informal documents, as her delegation found them difficult to access. The Secretariat replied that all informal documents should be available on the Members' website, and that they would check to see if there were any technical problems regarding access.

85. The representative of India stated there was merit in the Chairperson's statement, but that Members should think about how it should be done, e.g. by reissuing informal documents as regular documents. The representative of the European Communities agreed with India, including on the merits of derestriction, and noted that WPDR work had attracted much outside attention, perhaps because important documents were restricted. She suggested that the old and new WPDR chairpersons consult with Members on the issue.

86. The representative of Mexico also agreed with India, and stated that Members must be careful on the issue. With regard to the Chairperson's Notes, he stated that Members should think about some form of "prior consensus" to prepared the Notes for release as formal documents. The representative of Uruguay stated that Members needed to clearly distinguish between formal and informal documents. He suggested that a proposal be made to Members to reclassify the documents concerned as formal documents.

87. The representative of Malaysia stated that India's point was valid, and that informal documents were not publicly distributed. For important documents, Members could decide to derestrict them, he stated. He also noted the usual six-month waiting period for the derestriction of formal documents, and asked what Chairperson intended. The Chairperson agreed there were existing rules, and said he did not have any definitive ideas. The incoming and outgoing chairpersons could consult with Members, he stated. The representative of Brazil stated they were open-minded on the issue, and noted as a precedent that the Secretariat informal note on necessity had been made public.

88. The Chairperson concluded by stating that misinformation outside the WTO about the WPDR had stirred him to act. Members would explore the issue further.

(e) Appointment of the Chairperson

89. The Chairperson noted that the Chairman of the Council for Trade in Services had not yet made a proposal for the new Chairperson of the WPDR, so Members would need to revert to this item at the next meeting, albeit without him in the Chair as this was his last meeting. He would therefore expect the new Chairperson to assume the chairpersonship from the beginning of the next meeting.
