
Working Party on Domestic Regulation

REPORT ON THE MEETING HELD ON 22 OCTOBER 2002

Note by the Secretariat¹

1. The Working Party on Domestic Regulation (WPDR) held its eighteenth meeting on 22 October under the chairpersonship of Mr. Sérgio Santos from Brazil. The agenda for the meeting is contained in Airgram WTO/AIR/1929. As with the previous meeting on 16 July, discussion focused on the examination of regulatory measures, based on a new Chairperson's Note and a revised paper from the Secretariat.

2. Before moving to the agenda items, the Chairperson noted for the record that the Working Party had held an informal meeting on 9 October. He stated that significant progress was made during the discussions, the outcomes of which were summarized in his latest Chairperson's Note, circulated as JOB(02)/147, dated 16 October 2002.

3. The Chairperson also reminded Members that, following the presentation by the OECD at the meeting on 16 July, the Working Party had agreed to have the presentation circulated as a room document. Also available at the back of the room was a strikeout version of the *Summary of Discussions on the Checklist of Issue for WPDR* (JOB(02)/3/Rev.2, dated 4 October 2002), which had been updated from the previous WPDR formal meeting.

A. DEVELOPMENT OF REGULATORY DISCIPLINES UNDER GATS ARTICLE VI:4

1. Discussion of Concepts Relating to the Development of Disciplines

4. The Chairperson noted that the first item on the agenda was the *Development of Regulatory Disciplines under GATS Article VI:4*, with the first sub-item being the *Discussion of Concepts Relating to the Development of Disciplines*. At the previous formal WPDR meeting on 16 July, Members had commenced initial discussions of the measures listed in Annex I of the *Examples paper (Examples of Measures to be Addressed by Disciplines under GATS Article VI:4)*, starting with the first category, *Transparency*. Comments were also made on other measures, including residency requirements.

5. The Chairperson observed that, during the informal meeting on 9 October, Members had agreed to add a detailed resume of discussions as a new annex to the *Examples paper*. The Secretariat subsequently circulated the revised version of the *Examples paper* as JOB(02)/20/Rev.2, dated 18 October 2002. At the Chairperson's request, a representative of the Secretariat introduced the revised paper. The representative noted that including a detailed resume of discussions to the *Summary* would have made that document too long, therefore Members had agreed to add Annex III to the *Examples paper*. Together with the Annex III, a short introduction had been added at para 12.

6. The Chairperson also observed that he had emphasized strongly in his Chairperson's Note that the most important element of the examination of regulatory measures was the full participation

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

of all Members, particularly developing countries. As previously noted, many of the regulatory examples lacked enough specific detail to enable a more precise assessment according to the methodology agreed by Members. Consequently, it was suggested that the Members who faced such regulatory issues supply more details.

7. Moving to the discussion of regulatory examples, the Chairperson observed that, in his Note, he had suggested that Members continue examining the measures listed in the *Examples* paper, starting with the second and third categories of Annex I, i.e. *Licensing requirements* and *Licensing procedures*. He had proposed that the Licensing examples under both Parts A and B of Annex I be discussed. This would be followed by further comments on *Transparency* measures, and then on any other measures. He also pointed out that Part A of Annex I concerned types of measures presumably not addressed by the *Accountancy Disciplines* (*Disciplines on Domestic Regulation in the Accountancy Sector*, S/L/64 dated 17 December 1998), while Part B concerned types of measures that would seem to already be dealt with by the *Accountancy Disciplines*.

8. In terms of methodology, the Chairperson noted that he had suggested in his latest Note that the Working Party add a fourth question to the three used in the examination of regulatory examples. The three questions Members had agreed to asking when looking at each measure individually were:

- (a) Is the measure already covered by Articles XVI and/or XVII?
- (b) If not, is it addressed by any other provisions of the Agreement (e.g. Articles II, III, VIII, IX)?
- (c) If not, does it fall clearly within the scope of Article VI, in particular VI:4 (licensing requirements, qualification requirements, technical standards, licensing procedures and qualification procedures)?

While already implicitly mentioned in his previous Notes, the Chairperson suggested that the Working Party add the following question to the above examination:

- (d) If so, is the measure adequately addressed by the relevant provisions of the *Accountancy Disciplines*, or are modifications required?

9. Before opening the floor, the Chairperson stated that, as with the July meeting, Members should indicate if they wished their interventions to be recorded in the Minutes; otherwise, the examination would be on an informal basis followed by a summary of discussions from the Chairperson.

10. Summarizing the informal discussions, the Chairperson stated they had been interesting, and useful comments were made on a number of the regulatory measures under consideration by the Working Party. He noted that comments were made, and questions raised, on the issue of national treatment and *de facto* discrimination. Members also pointed out the possible need to look at the clarification of the definitions of the five types of regulatory measures covered by Article VI:4. The Chairperson concluded by reminding Members that Annex III of the *Examples* paper would be updated to reflect the contents of the informal discussions.

11. Returning to formal mode, the Chairperson asked if there were comments on any of the issues covered under the *Summary of Discussions* (i.e. General Issues, Transparency, Equivalence and International Standards), or under this agenda sub-item as a whole. He noted that, since the last WPDR meeting, Japan had submitted an informal paper, JOB(02)/150, dated 21 October 2002. He then asked if Japan wished to introduce their paper.

12. The delegation of Japan said they had presented a short informal paper in order to give some material for further reflection and analysis regarding possible future regulatory disciplines. The paper highlighted two issues regarding the factual analysis of existing GATS disciplines. The first was a factual analysis of the relationship between the existing disciplines or obligations under the GATS, and the types of measures, laws or regulations to which such disciplines or obligations applied. A diagram on the third page of the paper illustrated the relationship. Japan's preliminary observations were contained in sub-paragraph (c) of para 1 of the paper, and showed how some disciplines and obligations applied across the board, and how others only applied to sectors where specific commitments had been made. Although such observations were already known, Japan believed a structured analysis was useful. The second part of Japan's paper highlighted the relationship between any future disciplines and measures falling under GATS exceptions provisions. The delegation stressed that disciplines under Article VI:4 should not prevent measures under the exceptions provisions. The paper contained Japan's preliminary observations, and they wished to hear the views of other Members.

13. The Chairperson then opened the floor for comments on Japan's paper. The representative of Hong Kong, China stated that Japan's paper was very useful and pertinent, and noted that the Working Party in recent months had moved away from debating the scope of legal application. Japan's paper pointed out the need to take a very pragmatic approach, and to actually take a look at the individual elements of any disciplines to be created and the reasons behind their legal application. The representative pointed out that Japan had previously mentioned the possibility of a different scope of application for disciplines on such aspects as transparency and necessity. Members needed to take a practical look at the use and purpose of disciplines, the representative stated, both with and without specific commitments.

14. The representative of India stated that important issues had been raised in Japan's paper. In India's view, any future horizontal disciplines under Article VI:4 should be applied only where commitments had been undertaken. The representative also stated that India needed time to study both Japan's paper and the *Examples* paper in greater detail.

15. The representative of Uruguay made preliminary comments regarding para 1 (c) of Japan's paper, stating that all obstacles to progress by the Working Party needed to be carefully analyzed by Members. He reiterated his delegation's position, i.e. that, pursuant to Para 1 of Article VI as well as the interpretation of all the paras of Article VI, it must be concluded that disciplines should be applicable only where specific commitments had been undertaken. He noted that this was the basis on which the *Accountancy Disciplines* had been reached, and that this agreement had been reached by all Members. He also noted that the *Decision on Professional Services* stated that disciplines were intended to give operational effect to specific commitments. The representative emphasized that his delegation wished to move the work forward, and said that the only way to reach consensus was to accept the reality that disciplines must be applicable only where specific commitments had been undertaken.

16. The Chairperson asked Members to refer to the *Summary*, noting that pages three and four contained a summary of the Working Party's extensive previous discussions of both the scope of applicability of any future disciplines and the relationship between GATS Articles XVI & XVII and Article VI:4.

17. The representative of Brazil thanked Japan for their pragmatic approach. Referring to the fifth para on page 4 of the *Summary*, he cautioned that the "bottom-up" approach of the GATS could be undermined, if disciplines were to be applicable regardless of whether specific commitments had been undertaken. This would especially be the case if disciplines were to address the issue of *de facto* discrimination, he stated.

18. The representative of the European Communities said she particularly liked the diagram in Japan's paper. On Brazil's comments, she found them slightly surprising, but did not want to prejudge the question of the applicability of disciplines. The representative noted her delegation's impression that Article VI:4 concerned the administration of regulatory measures, and not actual liberalization in the sense of Article XVI.

19. The delegate from Hong Kong, China, regarding Brazil's comments, said that Japan's paper had attempted to put the issue in a practical context. It was clear from the diagram in the paper that certain aspects of possible disciplines, for example those regarding transparency, could relate to existing GATS provisions such as Article III that applied irrespective of whether specific commitments had been taken. Closer examination of the issues raised in Japan's paper would therefore be useful, the delegate stated, without prejudging the question of applicability.

20. The Chairperson observed that Members were bringing back previously discussed issues. In the end, he stated, it was up to Members to decide on the applicability of disciplines. He noted that Uruguay had mentioned the Marrakesh ministerial decision on professional services, while other delegations had raised arguments for possible general applicability. Members should not lose sight of the debate which the Working Party had already had for several months, he stated, in order to avoid repetition.

21. The delegation of Brazil elaborated up their earlier statement, stating that the implications of Article III rules might be somewhat different from those under Article VI. The market access aspect was directly related to the possibility of discussing *de facto* discrimination under Article VI, he stated.

22. The Chairperson concluded the debate by stating that the Working Party would take note of the statements made, and revert to the issue at the next meeting.

2. Development of Disciplines for Professional Services

23. The Chairperson then turned to the other main aspect of the work on regulatory disciplines, the *Development of Disciplines for Professional Services*. As noted in the Minutes, he stated, Members had made extensive comments at the 16 July formal meeting regarding the issue of the Secretariat consultations with international professional services organizations. The Working Party agreed to have the Secretariat prepare a draft letter for the consultations, which was discussed at length at the 9 October informal meeting. As reported in his latest Chairperson's Note, the Secretariat had prepared a revised letter on the basis of the comments received, circulated as JOB(02)/139/Rev.1, dated 16 October 2002.

24. The Chairperson had proposed in his Note that Members adopt the revised letter at the current meeting, for circulation initially to the international professional services organizations previously selected by Members. The fifth revision of this list of international organizations was circulated as JOB(01)/98, dated 28 June 2001. As he had noted, any responses to the letter would be circulated informally to Members. Subsequently, the letter could also be sent to any regional or other professional services organizations as selected by Members. He also pointed out a typo in footnote 9 of the English-language version of his Note, which should have referred to JOB(01)/98.

25. Before opening the floor for comments on the revised letter and the proposal for circulation, the Chairperson observed that it was an appropriate moment to point out that Australia had recently requested the circulation of two documents from the Union Internationale des Architectes (UIA) regarding their recent work on domestic regulation. These were JOB(02)/146, dated 21 October 2002 and JOB(02)/151, dated 22 October 2002. He noted that the documents were exactly the type of regulatory information to be requested in the letters to international professional organizations. The Chairperson then asked if Australia wished to introduce its papers.

26. The delegation of Australia recalled that Australia had facilitated and hosted a presentation by the UIA that was an add-on activity to the work programme of the WPDR. The two papers submitted for the meeting were the direct result of the seminar held in July. The first paper was a presentation by the Australian CEO of the Royal Australian Institute of Architects on the *UIA Accord on Recommended International Standards of Professionalism in Architectural Practice*. The second paper presented the actual *UIA Accord* in detail. Examining the two papers made clear that the UIA had a strong vision for a globalized architectural profession that respected national and cultural differences. Australia believed that the challenge for the WTO generally, and for the WPDR in particular, was to engage with organizations such as the UIA, and to utilize their work, knowledge and experience to further develop trade rules for professional services in the WTO.

27. The Australian delegation noted that much of the UIA's work was reflected in the *Accord*, which the XXIst UIA Assembly in Beijing, China had unanimously adopted in June 1999. The *Accord* underpinned the UIA's work with national registration, licensing, certification and accreditation agencies – work aimed at developing more detailed guidelines that could eventually become the standard for the architectural profession. The representative mentioned that the UIA now represented over one million architects in 108 countries. The *Accord* was particularly sensitive to national sovereignty and to the need to tailor guidelines to local conditions.

28. Put simply, the Australian delegation stated, the *Accord* contained a statement of principles of professionalism and a series of policy issues/statements. The principles of professionalism were covered under four headings: expertise, autonomy, commitment and accountability. The UIA was interested in engaging with the WTO in relation to its rules work and, more broadly, with market access negotiations. Australia considered that the UIA work was highly relevant to the Working Group's efforts to develop disciplines for professional services, and responded to delegations' requests to work more closely with regulators and professional associations. Australia welcomed the decision of the WPDR to initiate consultations with international professional organizations, and hoped the Secretariat letter would be finalized and circulated as soon and possible.

29. The Chairperson then opened the floor for comments on both the revised letter and his proposal for circulation. The representative of the European Communities hoped the revised letter could be sent out as quickly as possible, and that the input from professional associations would provide additional expertise to trade negotiators.

30. The delegation of Chinese Taipei said they had begun domestic consultations in August, and expected to deliver results by the next meeting or soon after. The delegation thanked the Secretariat for incorporating their comments into the revised letter. Regarding criteria, they recommended that the list include regional organizations to enlarge participation. On their domestic consultations, the delegation noted that some professional associations were not familiar with *Accountancy Disciplines*, and suggested that a symposium might be held to facilitate consultations.

31. The Chairperson stated that, regarding domestic consultations, he and the Secretariat had prepared a Note for use by delegations that was circulated at the July meeting as JOB(02)/80, dated 12 July 2002. He also noted that the Secretariat consultations did not mean that domestic consultations were concluded, and that Members could report on them at any moment.

32. The delegation of Japan stated that Members should send out the letter as early as possible to the organizations listed in JOB(01)/98, and then to consider sending additional letters to regional organizations and other international organizations. The delegation of Australia also endorsed the letter and attachments, and said it should be sent as soon, and as widely, as possible.

33. The delegation of Thailand also agreed on the letter. They would have liked to have an additional element on necessity, but felt that question 1 should be broad enough as stated. Thailand's position was that the Working Party should endeavour to develop only any necessary disciplines, and

that there was no agreement on strengthening the *Accountancy Disciplines*. The delegation emphasized that Thailand was not trying to delay the consultations or the discussions on disciplines. Thailand's position was that if any disciplines were to be created under Article VI:4, they wished for horizontal disciplines negotiated at the multilateral level, rather than sector disciplines at the bilateral level. The Chairperson thanked Thailand for their flexibility and constructive participation, and clarified that a necessity element was not added in order to avoid confusion with the necessity test.

34. The representative of Uruguay also agreed on the letter and proposal for circulation. He suggested a pragmatic approach regarding broadening the circulation, with the two basic criteria being the footnote to Article VI:5 and the listing of organizations submitted by Members. He stated the letter should be sent to the current list of organizations, without reopening the debate on the listing which would remain open to future additions. The Chairperson said that was exactly his idea, i.e. to send the letter to the current list of associations, and then later, subject to Members' consensus, to regional and other types of organizations.

35. The delegation of Colombia concurred with Uruguay's position. The delegation of Korea urged that the letter be sent as soon as possible in order to give more time for deliberation. They noted that Korea at the informal meeting had suggested attaching the circulation list to the letter to enhance transparency, and again urged that it be considered. The delegation of Switzerland said they associated themselves with the revised letter and the proposal for circulation.

36. The delegation of Hong Kong, China joined in approving the letter and proposal for circulation, noted that the listing continued to be open for further additions. In parallel, they appealed to Members to press ahead with domestic consultations, noting that three years had already passed since consultations were initially proposed. The delegation of Indonesia associated themselves with the views of Uruguay, and reiterated that they could go along with the Secretariat consultations, for the purpose of obtaining additional information for consideration by Members. The delegation agreed that the listing of international organizations should remain open.

37. The delegation of the United States gave strong support to the letter and proposal for circulation, and said they would not be opposed to reviewing additional international or regional organizations to be added to the listing. They also wished to keep discussions open to both horizontal and sectoral disciplines. The work was based on the premise of making progress on multilateral negotiations, the delegation indicated, but the U.S. was not closed to advances on bilateral negotiations as well.

38. The Chairperson, regarding Korea's idea of attaching the circulation list to the letter, submitted the idea to Members, reminding them that the listing would remain open. Members agreed to attach the circulation list, as contained in JOB(01)/98.

39. The delegation of India stated they also agreed on the letter and proposal for circulation. Regarding additions to the listing, Uruguay had reminded Members on the criteria previously agreed by the Working Party. On this basis, Members could suggest whom to send the letter to in the second stage, the delegation stated.

40. The delegation of Hong Kong, China, regarding the points raised earlier by Thailand, noted that Members were free to raise any relevant issues, including those arising from bilateral discussions. This was important, as there could be synergy between ideas emerging from bilateral consultations and the work of the WPDR, the delegation stated, and therefore it should be open for Members to raise such regulatory issues in the Working Party. The Chairperson agreed, stating that Members were not prevented from raising any issues in the Working Party under the Article VI:4 mandate.

41. The delegation of Thailand said that perhaps they needed to clarify their previous intervention. They understood fully that the Working Party may develop any sectoral disciplines, but

Thailand would prefer that work at the current stage of negotiations be concentrated on the development of horizontal disciplines.

42. The delegation of Mexico, in rereading the letter, questioned the lack of a time reference to the negotiations. The Chairperson agreed that was a good point, but noted that a reference was made to that effect in para 4 of the background section of the letter.

43. The delegation of Guyana made two points. First, Guyana could support the letter and the existing list. In order to obtain a broad perspective, however, the listing needed to reflect both regulatory organizations and those representing services providers. The delegation of Uruguay shared Guyana's point, and emphasized that Guyana or any other Member could propose organizations for addition to the listing. The delegation said Members also needed to be practical, and to send the letter out.

44. The Chairperson, regarding Mexico's point, agreed it might be useful to have an indicative deadline for responses, such as February 2003 to allow the compilation of responses. He suggested adding a sentence to the final paragraph of the letter. The delegation of the United States agreed that a deadline was needed, but said it should not be limited to 2003, and the letter should note that the end date for the current negotiations was 2005.

45. The delegation of Guyana, returning to their previous point, said that their services providers were not represented in some international professional services organizations. Guyana in the future might therefore have to insist upon additions to the listing, the representative stated. The Chairperson observed that Guyana would probably not be the only delegation insisting that additions be made to the listing.

46. The delegation of Uruguay said Mexico's proposal was useful, and Members should give the Chairperson flexibility in setting a deadline. The Chairperson stated that the Secretariat could add a deadline to the letter, and circulate the new version for ad referendum approval by Members. A representative of the Secretariat, responding to Members' comments, agreed that the Working Party needed to add a sense of the desirability of a timely response to the letter. Therefore, it was useful to indicate that it would be helpful if responses were received by February 2003, but to also refer to the overall timeframe of the negotiations. The delegation of Korea proposed that an initial deadline, of February 2003, be indicated in the letter.

47. The Chairperson suggested that the Secretariat revise the letter, and if no substantial comments were received in writing within one week, Members would be considered as having approved the circulation of the revised letter to the international organizations listed in JOB(01)/98.

48. It was so agreed.

49. The Chairperson then noted that the other major element of the work on professional services was the review of the *Synthesis* paper (JOB(01)/162, dated 27 November 2001). In his Chairperson's Note, he had observed that the Working Party on 16 July began initial discussions of the *General Comments* section of the *Synthesis* paper. Although the comments received were not extensive, he had stated in his Note that he intended to open the floor again for comments on the *Synthesis* paper at the formal meeting, starting with Part III, *Results by Profession*, followed by any additional interventions on the *General Comments* section. The Chairperson indicated that discussions would again be on an informal basis, followed by his Chairperson's summary.

50. The delegate from Hong Kong, China, after asking that his statement be included in the Minutes, said the *Synthesis* paper indicated that an important element in the development of disciplines on professional services was the recognition of qualifications. He emphasized that the lack of a mechanism to recognize qualifications obtained in another country, even where market access

commitments had been made, was a key issue that could restrict the access of foreign suppliers. The issue was especially important for services suppliers from developing countries, as they were less likely to be party to established recognition arrangements.

51. Particularly for suppliers under Mode 4 and SMEs, proving the equivalency of qualifications each time they wished to provide services was a significant burden, the delegate from Hong Kong, China stated. Although some Members might point to Article VII as a solution, he questioned the extent to which it could actually address the issue. Article VII was an enabling clause for recognition agreements to be created, he noted, and did not in itself impose any obligations for the establishment of recognition arrangements. Recognition of qualifications was essential to ensure that market-access commitments were meaningful for foreign suppliers, the delegate stated, and putting the burden of proof solely on the suppliers could be too burdensome. The development of disciplines on professional services under Article VI:4 was therefore essential, to ensure that the recognition of qualifications was not overly burdensome and would not be unduly denied to developing country suppliers.

52. The delegate from Hong Kong, China noted that para 19 of the *Accountancy Disciplines* provided some disciplines for taking account of the qualifications acquired in the territory of another Member. In addition, Article VI:6 required Members to provide for adequate procedures to verify the competence of professionals of any other Member in professional services sectors where they had undertaken commitments. His delegation was open to further deliberations as to whether such disciplines could be strengthened for horizontal application to professional services and possibly other sectors so as to ensure meaningful market access commitments.

53. The Chairperson summarized the informal discussions by stating that there had been a very interesting debate on the basis on the *Synthesis* paper and Members' domestic consultations. He again emphasized the importance of the full participation of Members, and urged those Members that have not yet reported on their domestic consultations to provide progress reports orally.

B. DATE OF NEXT MEETING

54. Returning to formal mode, the Chairperson noted that the next item on the agenda was the date for the next meeting. In accordance with the practice of grouping meetings of subsidiary bodies close to meetings of the Council, he suggested that the next meeting be held during the week just before the next CTS and Special Session meetings, i.e. in early December. Members approved the Chairperson's suggestion.
