

Working Party on Domestic Regulation

REPORT ON THE MEETING HELD ON 15 MAY 2003

Note by the Secretariat¹

Revision

1. The Working Party on Domestic Regulation (WPDR) held its twenty first meeting on 15 May. The agenda for the meeting is contained in Airgram WTO/AIR/2090. Due to the absence of the Chairperson of the Working Party, the meeting was opened by the Secretariat. Before adopting the agenda, the WPDR agreed first to move to the Appointment of the Chairperson, after which the agenda was adopted.

A. APPOINTMENT OF THE CHAIRPERSON

2. A representative of the Secretariat stated that, as Members were aware, Mr. Sergio Santos from Brazil, the Chairman of the WPDR, had been assigned a new posting and was unable to chair the meeting. Consequently, the Secretariat representative suggested that the WPDR move immediately to the appointment of a new Chairperson for the Working Party. Members approved the suggestion. The Secretariat representative then noted that, following consultations by the Chairperson of the Council for Trade in Services, Mr. Johannes Bernabe of the Philippines had been proposed as the new Chairperson of the WPDR. Members approved the appointment of the new Chairperson.

3. The new Chairperson said that the Working Party owed a debt of gratitude to Sergio Santos, who had led the Working Party to the current rather advanced stage of discussions. He paid tribute to the other previous Chairpersons as well, who had also helped advance the work of the WPDR.

4. Members welcomed Mr. Bernabe as the new Chairperson, and commended the outstanding work of Mr. Santos as the previous Chairman.

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

1. Discussion of Concepts Relating to the Development of Disciplines

Japan's Draft Annex on Domestic Regulation

5. The Chairperson noted that he had held informal consultations on three items. The first was Japan's proposal for a Draft Annex on Domestic Regulation (JOB(03)/45/Rev.1, dated 30 April 2003 was the latest version). In the consultations, most Members agreed that Japan's paper should be discussed more fully and comprehensively, together with other possible core elements for regulatory disciplines. At the same time, most Members believed that the discussion of Japan's paper should be coupled with continued consideration of the Secretariat paper, *Examples of Measures to be Addressed*

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.

by *Disciplines under GATS Article VI:4* (JOB(02)/20/Rev.5, dated 29 April 2003 was the latest version).

6. Most Members welcomed the Japanese proposal as a timely stimulus to ongoing discussions in the WPDR, the Chairperson stated. The proposal also offered a focal point for discussions on concrete core elements that might be included in possible horizontally applicable regulatory disciplines. At the same time, Members appeared keen on continuing the review and consideration of the *Examples* paper. Several Members noted that delegations might find value-added in the *Examples* paper, particularly in relation to how the measures referred to therein might be addressed in possible disciplines such as those contained in the Japanese submission. Likewise, some Members observed that the *Summary of Discussions on the Checklist of Issues for WPDR* (JOB(02)/3/Rev.5, also dated 29 April 2003, was the latest version) remained pertinent as certain questions raised therein continued to be relevant as Members continued to examine both the Japanese submission and the *Examples* paper.

7. The Chairperson then asked if Japan wished to introduce their revised proposal, as well as to add to the statements made at the previous WPDR meeting.

8. The delegation of Japan said that the revision of their paper was more or less self-explanatory. They had noted at the last WPDR meeting that, in parallel with continued discussion of the measures contained in the *Examples* paper, it would be useful to start discussions on the basis of concrete provisions. The main elements in Japan's draft Annex were drawn from the existing text of the *Accountancy Disciplines*, together with modifications that Japan believed appropriate for horizontal application. Two new elements were added, the delegation noted, Part X on adverse administrative dispositions relating to licenses and qualifications and Part XI on administrative guidance relating to licenses and qualifications.

9. Members welcomed Japan's revised paper, and made preliminary comments as recorded below.

10. The delegation of the European Communities, as a general comment, stated that Japan's approach went beyond the GATS Article VI:4 mandate, and built upon existing provisions in Articles III and VI:2. The very wide approach deserved further discussion. Regarding the scope of the draft annex, the delegation had questions on the apparent differences in the wording of paragraphs 1 and 3. They also asked for more details on Japan's views regarding the possibility of complementing horizontal disciplines with a more specific sectoral approach.

11. The delegation of Canada said that, overall, Japan's contribution clarified a number of concepts related to the development of generic disciplines. It was appropriate that the *Accountancy Disciplines* were the basis for considering the development of VI:4 disciplines. As the EC delegation had noted, paragraph 3 suggested a broader focus. On not prejudicing and continuing a two-track approach, i.e. pursuing generic disciplines while also working on more specific disciplines, Canada wished to explore that approach. The delegation noted that some transparency aspects were potentially addressed in other GATS Articles, and asked Japan to comment. The Working Party also needed to deal with the issue of technical standards, as noted in the paper. Canada had a strong interest in continuing to advance discussions of the *Examples* paper, and hoped for broader participation, as it was crucial for the WPDR to have the strongest possible basis of understanding about the issues.

12. The delegation of Switzerland emphasized that domestic regulation was a very important subject, for which there was a mandate, and the draft annex dynamized the WPDR work. Japan's approach was very comprehensive, but there was room for alternative or sectoral disciplines, and this

flexibility was very important. The paper was a very good basis for discussions, but clarification was needed on the scope of the annex.

13. The delegation of Chile agreed that Japan's paper was a good basis for discussions. They shared Japan's idea that specific disciplines might be required for specific sectors. Chile had not yet made a firm decision on VI:4 application. Japan's paper indicated special treatment was needed for Mode 4, and Chile wished to have more information in this regard. Regarding the level of application, the delegation stated that any disciplines must apply at all levels, as the majority of problems were at the sub-central level.

14. The delegation of Korea also said that the draft Annex was a good basis for future work, and that they shared the questions on scope and definition. Korea believed the scope should be limited to the five criteria in VI:4. Japan's draft seemed ambiguous, i.e. between paragraphs 1 and 3, and the transparency section seemed to duplicate Article III. On paragraph 4, agreed that measures regulating the entry of natural persons should be excluded. Disciplines should apply only where specific commitments had been taken, in order to have greater value-added by including stricter obligations. In this regard, the delegation questioned whether the exceptions in paragraphs 14 and 22 were desirable.

15. The delegation of Argentina said it was of importance, especially to developing countries, to make progress on regulatory issues multilaterally. Their first concern was already expressed, i.e. regarding the apparent differences between the objectives in paragraph 1 and scope and definitions in paragraph 3. Also, paragraph 8 on transparency reached beyond the scope of VI:4. Paragraph 4 on natural persons gave the impression of reducing the scope of VI:4 on a modal basis. On licensing and qualifications, they had the same doubts as Korea on the exceptions in 14 and 22, and asked how they would be applied. Many *Accountancy Discipline* provisions were now relativized, the delegation stated, e.g. in paragraphs 17-19 the term "shall" becomes "shall endeavour". The delegation also asked for more information on, and examples of, administrative guidance.

16. The delegation of Singapore said they saw VI:4 disciplines as a third pillar, together with market access and national treatment, which could impact on the regulatory autonomy of developing countries. Singapore felt that the Working Party had done useful work on regulatory examples, and agreed with Japan that it was useful to also look at draft disciplines. On scope, believed disciplines should be strictly limited to the 5 types of measures specified in VI:4. On definitions, the working definitions provided by the Secretariat in 1997 were a good basis. On application, only where specific commitments. Disciplines should not override scheduled commitments, e.g. residency requirements. On transparency, agreed it was a critical area. Disciplines should apply at both federal and sub-federal levels. On necessity, the delegation said it was one of the most fundamental aspects, with a significant impact on regulatory autonomy. WTO jurisprudence on this issue was evolving, and the CTE paper (WT/CTE/W/203, dated 8 March 2002) was useful in this regard. Legitimate objectives related to all sectors, and therefore Japan's reference to national policy objectives was interesting. Consequently, their preference was not to specify legitimate objectives. Like others, Singapore emphasized that disciplines should not prejudice other GATS Article.

17. On the VI:5 relationship to VI:4, because VI:5 was expected to disappear when VI:4 negotiations were concluded, Singapore questioned whether any important elements of VI:5 should be included in VI:4 disciplines. The delegation mentioned two elements to be considered, the first being VI:5(b), i.e. regarding measures "not reasonably expected....", which appeared to have the effect of grandfathering such that VI:5 applied only to new measures. The second element was that of nullification and impairment, as mentioned in the chapeau of VI:5. In this regard, Members must consider Article 3.8 of the DSU, which stated that nullification and impairment were presumed if a provision of a WTO agreement was violated. In VI:5, however, the burden of proof seemed to be on the complainant. The delegation asked if the Chairman and the Secretariat could provide ideas and

views on grandfathering, and on the burden of proof in regard to nullification and impairment. They asked for information on the negotiating history of VI:5, including whether the drafters of the GATS envisioned any role for either of these elements in VI:4 disciplines. The delegation also asked on how VI:5 related to the *Accountancy Disciplines*, including whether the Secretariat could confirm that VI:5 disappeared once disciplines went into effect.

18. The Chairperson said that perhaps he should not take a position on the two issues, and invited the Secretariat to comment. He also encouraged Singapore to circulate their intervention.

19. The delegation of Australia noted the potential of developing VI:4 disciplines as a complement to market access negotiations. Given the increased scrutiny within Members on the possible impact of the GATS, the delegation wished to work closely with Members to develop appropriate disciplines, while at the same time preserving the capacity of Members to regulate their economies. Australia looked forward to examining how the draft annex could apply to professional services and other sectors where commitments had been made. They also shared the questions of others on the scope of Japan's draft annex. The delegation emphasized Australia's strong support for transparency.

20. The delegation of the United States stated that Japan's paper was making a useful contribution to clarifying the scope and coverage of VI:4. They also advocated continued examination, via the *Examples* paper, of the types of measures for which disciplines might be developed. The delegation was pleased that Japan's paper, in the footnote to paragraph 2, did not prejudice the further development of sectoral disciplines. Based on domestic consultations, the U.S. delegation supported the development of disciplines, similar to the *Accountancy Disciplines* with perhaps some modifications, for architecture, engineering and legal services. The delegation urged Members to adopt the *Accountancy Disciplines*, as part of commitments in the sector. They also advocated horizontal disciplines on transparency, noting the existing provisions in the *Accountancy Disciplines*. On paragraph 4 of Japan's paper, they asked for further clarification. On paragraph 5, they were not sure if it made sense to include the definitions in an annex, asking if definitions of "domestic regulation" and "measure" might also be needed. On paragraphs 6 and 7, the delegation had serious reservations, and stated that it was hard to imagine a workable necessity test that was horizontally applicable.

21. The language included in Japan's paper appeared to go beyond VI:4, the United States stated. They were particularly concerned about paragraph 6 being applied to financial services, i.e. the possible effect on prudential measures. On concepts such as "not more trade burdensome than necessary", there was no previous consensus, the delegation stated. Therefore, Members needed to take a hard look if it was to be included. In paragraph 7, where Japan introduced the concept of a "rolling review", the delegation had serious concerns, especially as Members had not yet agreed on the necessity test. On national policy objectives, agreed the analysis needed to include sub-federal objectives. On Part III, the U.S. delegation hypothetically believed that the ad hoc application of the necessity test by the DSU was likely to be highly controversial. On Part 4, believed the Working Party could achieve great progress. On paragraph 13 and elsewhere, not clear if the coverage extended to local and regional non-governmental authorities. Concerning technical standards, the delegation had some questions regarding the relationship between paragraphs 5f and 28.

22. The delegation of Thailand agreed with the concerns on the scope of Japan's draft annex and the question of application at the sub-federal level, and was not comfortable with the carve-out of Mode 4. The delegation also supported the continued examination of the *Examples* paper. On qualifications, Thailand noted that Parts VII and VIII of Japan's draft, regarding the treatment of qualifications, made no mention of equivalence and MRAs. Other parts were also missing from the *Accountancy Disciplines*. The delegation concurred with Argentina's questions on administrative guidance, as well as Singapore's questions on VI:5.

23. The Chairperson noted the pending questions from Singapore, and invited the Secretariat to comment. The Secretariat noted that VI:5 was negotiated after VI:4, and that it was designed to deal with measures that were neither Market Access nor National Treatment limitations. He noted that VI:5 was heavily negotiated. On grandfathering, he agreed that VI:5 was essentially applicable only to new measures. In legal terms, it could be argued that VI:5 did not extend beyond GATS Article XXIII regarding non-violation situations involving nullification or impairment. Article XXIII also included the concept of reasonable expectations. Nullification or impairment was actually the starting-point in VI:5, as indicated by its placement in the chapeau, followed by the criteria. Therefore, it was almost the same as GATS Article XXIII, paragraph 3. As it is clear from its wording, particularly the reference to the entry into force of disciplines, Article VI:5 was intended to be temporary. However, the relationship between VI:5 and VI:4 was essentially up to Members to decide at the end of negotiations. On the burden of proof, it was the same under VI:5 as under GATS Article XXIII. The Secretariat concluded by noting that subparagraphs (i) and (ii) of VI:5 were cumulative conditions.

24. The Chairperson observed that delegations might wish to reflect on the Secretariat's statement.

25. The delegation of India, regarding Japan's paper, also sought clarification on the scope of paragraphs 1 and 3. On paragraph 4, the delegation wished to have more information. Like Thailand, India sought further clarification regarding Japan's approach toward qualifications. Regarding the application of transparency provisions, India's view was that disciplines should be applicable only where specific commitments had been made. On administrative burden and administrative procedures, India's views were well known and could be found in the *Summary*, the delegation stated.

26. The delegation of New Zealand noted the civil society and local government interests regarding domestic regulation, and thanked Japan for its effort on the issue. The delegation noted the importance of transparency to any discussion of domestic regulation as this was an important practical issue for service exporters in foreign markets. New Zealand believed the concept of national policy objectives was also an important one in the consideration of domestic regulation. The delegation indicated that it would give consideration to how a self-regulating approach for professional services bodies would fit with the type of framework proposed by Japan. Overall, the process involved a challenge in balancing a number of factors, including giving effect to specific commitments and protecting the right of governments to regulate. The *Examples* work was valuable, and should be continued, the delegation stated.

27. The Chairperson agreed that the *Examples* work should continue in tandem with the examination of Japan's paper.

28. The representative from Hong Kong, China agreed that the *Examples* discussion was complementary to discussion of the draft annex, and urged further contributions, especially from developing countries. It might be useful to make a crosscheck between the two discussions in the future, he stated. The representative asked that his preliminary comments on Japan's paper at the previous meeting, concerning Mode 4 and competent authorities, be put on the record. Regarding Mode 4 measures, the representative had noted that paragraph 4 of Japan's paper was apparently transposed from paragraph 4 of the Annex on Movement of Natural Persons, which provided that the Agreement should not prevent a Member from taking certain measures relating to movement of natural persons, provided that such measures were not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment. The representative had asked if there was any difference in the formulation in paragraph 4 of Japan's paper, and whether Japan would envisage that the type of examples raised in the discussion would fall within or outside the scope of the disciplines envisaged by paragraph 4.

29. Regarding competent authorities, the representative from Hong Kong, China had stated that, on previous occasions, they had emphasized the importance of application of disciplines at the level between regulators and suppliers. His delegation therefore wished to clarify whether the disciplines envisaged in Japan's paper would apply at the level of the competent authorities as well, and whether the Member concerned would be required to ensure their competent authorities complied with such disciplines. This was particularly relevant to transparency disciplines which concerned transparency to applicants, such as those mirroring paragraph 4 of the *Accountancy Disciplines* to ensure that applicants had full access to information relating to licensing and qualifications. Such information was essential to service suppliers in order to obtain a license or certification to provide their services, and was particularly important to small and individual service suppliers who lacked the institutional capacity to search for such information themselves.

30. Continuing his intervention, the representative from Hong Kong, China stated that Japan's reference to national policy objectives was welcome, and that he agreed with New Zealand on the need to take into account Member's right to regulate. On scope, he shared the questions raised by previous delegations. On application, he associated his delegation with Chile and Singapore on the importance of applying the disciplines to all levels of government. Article I:3 should guide the development of disciplines, he stated. On approach, Hong Kong, China was open to examining both horizontal and sectoral disciplines. Perhaps a horizontal focus for the time being could subsequently provide the basis for the creation of sectoral disciplines, as well as help to avoid "reinventing the wheel". On qualifications, the representative shared Thailand's questions, noting that paragraphs 10, 19, 21 of the *Accountancy Disciplines* were missing from Japan's draft. Also, paragraph 26 in Japan's draft was missing the *Accountancy Disciplines* aspect of requiring competent authorities to identify where qualifications fell short.

31. On other issues, the representative from Hong Kong, China said it was important to avoid any overlap between VI:4 disciplines and existing GATS provisions. He suggested first looking at what sorts of disciplines were required, and then examining any potential overlap. Regarding the comments made by the United States on the adoption of the *Accountancy Disciplines*, he noted that the *Decision on Domestic Regulation* (S/L/70, dated 28 April 1999) stated that the *Disciplines* were intended to be integrated into the GATS. His delegation's view was that adopting the *Disciplines* did not involve their integration into individual Member's schedules. Regarding VI:5, the representative thanked Singapore and the Secretariat for their comments, and said that VI:5 should be considered guidance as to the minimum to be achieved under VI:4 disciplines, i.e. implementing the three criteria of VI:4(a), (b) and (c). On necessity, the representative asked what in the *Accountancy Disciplines* necessity test was particular to accountancy, and therefore not horizontally applicable to other sectors. He noted that the Working Party was far from understanding the full implications of necessity test, and that perhaps it would be useful to go deeper in examining the existing jurisprudence. He asked if the previous Secretariat Note on necessity (Job No. 5929, dated 8 October 1999) could be updated, including by providing examples of how the necessity test was applied in practice.

32. The Chairperson agreed there could be value-added in updated the existing Secretariat paper on necessity.

33. The delegation of Mexico seconded the questions raised by Argentina, and supported the comments made by New Zealand. The delegation stated that, as in that other WTO agreements, the various jurisdictions should be recognized, and that rules could not always be applied equally to all levels of government. Regarding technical standards, Mexico noted that the TBT Agreement, as an example, had rules regarding transparency, cost-benefit analysis, etc. which all Members were able to fulfil. In the NAFTA Agreement, the TBT section included technical regulations for services as well as for goods. On paragraph 5(f) of Japan's paper, the delegation suggested that existing definitions from WTO agreements, especially the TBT Agreement, be used. Voluntary standards were

apparently not included in the GATS, and therefore the reference to voluntary standards in paragraph 5(f) might cause technical complications.

34. The delegation of Peru said that Japan's paper helped to concentrate Members' thoughts on what an annex on domestic regulation might include. They joined with Argentina's concerns on scope, and the need to focus only on the coverage of VI:4. On horizontal versus sectoral approaches, agreed they were complementary. Application only where specific commitments had been made. On transparency, agreed with Japan that it was a key subject, but noted that it could become a heavy burden for developing countries. On levels, agreed disciplines should apply to all levels of government. On the necessity test, agreed it was very controversial, including for civil society, and needed more study in order to be applicable to all sectors. Agreed with Thailand's concerns on paragraphs 32-34 regarding administrative guidance. On Mode 4, believed was important to apply disciplines to Mode 4, with no carve-outs. Would be useful for Members to present examples of how regulations would be treated under Japan's draft annex.

35. The delegation of Latvia noted that paragraph 29 of Japan's draft concerning transparency requirements for technical standards might involve certain aspects of intellectual property rights.

36. The delegation of Uruguay underlined that, in Japan's paper, disciplines would be applied to sectors where specific commitments had been made. They expressed concern in regard to paragraph 13 on transparency and prior comment. On paragraph 26, regarding the verification of qualifications within a reasonable timeframe, the delegation noted that it could not be assured in Uruguay, as verification was in the hands of an autonomous agency. On paragraph 31, the mechanism for such procedures did not exist in Uruguay. Such requirements might become an obstacle to making specific commitments in the future. Like Argentina and other delegations, Uruguay also had concerns over paragraph 3 regarding scope, and asked for further clarification. A question was also raised regarding the meaning of paragraph 8 in the introduction to the draft annex regarding the entry of natural persons.

37. The delegation of Norway joined with other delegations in noting the importance of transparency.

38. The delegation of Turkey asked for examples of the national policy objectives referred to in paragraphs 6, 10 and 28 of Japan's paper, and whether they were the same as the legitimate objectives referred to in the *Accountancy Disciplines*. Regarding the reference to emergency situations in paragraph 12, Turkey asked for examples of such situations, as well as confirmation that they did not involve GATS Article X. On paragraph 13(iii), the delegation said that publishing public comments was difficult to apply, as they did not have such a mechanism. It would also cause difficulties for many developing countries, especially LDCs, and therefore might not be necessary.

39. The delegation of Cuba, regarding paragraph 4 of Japan's paper, asked for an explanation of why the draft annex would not apply to measures regulating the entry of natural persons. On paragraph 13, the delegation said it would impose additional burdens on developing countries, and that Article III was sufficient.

40. The delegation of Chinese Taipei noted that preliminary comments on transparency and scope had been made in their previous intervention. They believed that the inclusion of disciplines on public comment procedures would help meet the demands of civil society. On footnote 2 to paragraph 2, Chinese Taipei believed that discussions of the *Examples* paper were complementary to discussions on the draft annex. On paragraphs 30 and 31, regarding administrative guidance, the delegation wished for more detailed information. On paragraph 35, asked why only judicial tribunals were included, rather than judicial, arbitral or administrative tribunals as specified in Article VI:2.

41. The delegation of China said that disciplines should be applicable to all levels of government. Equivalence should be taken into account when considering disciplines on qualification requirements. On paragraph 13(ii), the delegation was concerned over the administrative burden of that requirement.

42. The delegation of Egypt, regarding the exclusion in paragraph 4 of measures regulating the entry of natural persons, emphasized that Mode 4 was extremely important for developing countries and could not be excluded. On applicability, should be where specific commitments had been made. The delegation agreed with Singapore that disciplines must not override specific commitments.

43. The delegation of Poland said that Japan's paper dynamized the discussions, and was an appropriate basis for discussions. In regard to paragraph 4, and especially footnote 3, they wished to have much more information on the application of the draft annex to Mode 4. On paragraph 3, the delegation stated they believed it went beyond the scope of VI:4.

44. The delegation of Malaysia said they wished to move cautiously on horizontal disciplines, as the domestic consultation process was more extensive. It was also important to emphasize that domestic regulators had the right to regulate. Disciplines must not erode legitimate objectives, and must not override other GATS provisions, including the prudential "carve-out". On scope, it seemed that Japan's proposal did go beyond VI:4, and Malaysia asked for an explanation. They were concerned over the exclusion of Mode 4. The delegation supported the application of disciplines to where specific commitments had been made. Transparency was important, but it should not be overly burdensome, e.g. prior comment should not be mandatory. The delegation supported Thailand's comments on equivalence and MRAs. On the issue of horizontal versus sectoral disciplines, they needed to give it more consideration. They asked the legal implications of having some *Accountancy Disciplines* missing from the draft annex, as well as the implications of any contradictions between disciplines at the horizontal and sectoral levels.

45. The delegation of Indonesia stated that, regarding scope and objectives, clarification of the draft annex was needed. Disciplines, including transparency provisions, should be limited to the five aspects covered by VI:4, the delegation stated, and applicable only where specific commitments had been made.

46. The delegation of Brazil said they preferred a horizontal approach on domestic regulation, without excluding other approaches, and associated themselves with the interventions of Argentina, Uruguay and India. The delegation encouraged Japan to put forward a revised version of their proposal.

47. The delegation of the United States observed that Secretariat views were without prejudice to Member's rights and obligations. On the temporary nature of VI:5, the delegation stated that the language of VI:5 regarding entry into force of disciplines seemed to provide certainty as to when VI:5(a) ceased to apply. The Chairperson noted that the Secretariat comments were understood to be on a consultative basis.

48. The delegation of Japan thanked the Working Party for the warm welcome and substantial interest in their draft annex on domestic regulation. Regarding the comments made on paragraph 1, they noted that Japan had used the wording from GATS Article VI:4. On the "inconsistency" between paragraphs 1 and 3, Japan did not necessarily think that was the case, as paragraph 1 was the Objectives, and paragraph 3 referred to the kinds of measures to which the disciplines would be applied in order to attain such objectives. Japan did not believe that the scope of the Objectives and the scope of the application had to be exactly the same. If the *Accountancy Disciplines* had enhanced transparency requirements, the delegation asked why it could not be the case for horizontal disciplines as well, in order to attain the objectives stated in paragraph 1. During the *Examples* paper discussions, much interest had been expressed in the need to address transparency issues. On the

question of horizontal versus sectoral disciplines, Japan's view was as written in the paper, i.e. they were not mutually exclusive. If both types of disciplines were created, Members needed to consider the relationship between them, the delegation stated. In order to avoid possible duplication, the WPDR might therefore look at horizontal disciplines first.

49. On paragraph 4, the delegation of Japan had wondered if it would be appropriate to apply disciplines to measures regulating entry and temporary stay, and had therefore carved out the entry of natural persons. The delegation asked if such measures were actually licensing requirements or procedures, qualification requirements or procedures, or technical standards. They also asked if the immigration authorities of Members would be ready to apply disciplines to such measures. It would be difficult to reflect on the substance of disciplines applying to both immigration procedures and VI:4 measures, the delegation stated, and for that reason that had added footnote 3 to their draft. On paragraph 5, Japan was open to useful definitions, and would take note of Mexico's comments. Regarding levels of government, their paper made no specific reference, but Japan's view was that disciplines should be based on Article I:3(d). On application to self-regulating bodies, the issue could be addressed if necessary, and the delegation was open to Members' ideas.

50. On Part III, regarding preparation, adoption and application of measures, the delegation of Japan stated that the comments by Singapore and the United States merited deep reflection. The wording was taken directly from paragraph 2 of the *Accountancy Disciplines* and, therefore, Japan joined with Hong Kong, China in asking the United States what particular aspect made its application difficult. On national policy objectives, the wording was taken from the GATS Preamble, and was associated with the right to regulate. More thinking was needed, and Japan wished to hear Member's views regarding any differences between legitimate objectives and national policy objectives. On paragraph 7, also concerning the necessity test, Japan again took note of the serious reservations expressed by the United States. As indicated in paragraph 6, the wording was taken from the TBT Agreement, with changes to eliminate the obligatory aspect.

51. On Part IV, regarding transparency, the delegation of Japan agreed that the application and coverage were broader than in VI:4. Again, these aspects were not totally new, and Japan's intention was to build upon what was already found in the *Accountancy Disciplines*. Paragraph 11, concerning the treatment of applicants, was specifically a best-endeavour clause, due to possible differences across sectors, and involved transparency "in the field", rather than in Geneva. For paragraphs 17 and 24, the same idea applied. Paragraph 12 was an idea from the TBT, with changes in wording to give flexibility. The delegation confirmed that the reference to emergency situations was not intended to address situations under GATS Article X. On public comment procedures, Japan's view was that the benefits were well known. Although public comment did involve administrative costs, they could be reduced with progress in information technology. Japan had attempted to strike a balance, by making it a best endeavour clause applied only to regulations at the central government level, and not to laws or legislative procedures. A change in formulation might be needed to accommodate measures at the sub-federal level. On paragraphs 14 and 22, the exceptions were intended to address rare cases, but perhaps such instances could be dealt with elsewhere.

52. On qualifications requirement and procedures, the delegation of Japan noted that some elements of the *Accountancy Disciplines* had not been included, as a result of Japan's reflection on their lack of applicability to other sectors. For example, provisions on the qualifications acquired in the territory of another Member, or on the role of MRAs, seemed to be less relevant in services sectors other than professional services, and it was also necessary to consider the fact that the competent authorities in all services sectors were not necessarily aware of, or took into account, foreign qualifications, the delegation stated. On Part X, they felt it was important to address the situation following the granting of a license, because it involved situations such as the withdrawal of licenses and qualifications, which would seriously affect the applicant. Uruguay's comments were noted. On Part XI, Japan had tried to address the relationship between competent authorities and

private services suppliers, in the same spirit as in Part X. One example of such administrative guidance was a situation where the competent authority “recommended” a services supplier to become a member of a relevant professional association on voluntary basis. Even if that supplier refused to do so they should not be subject to any unfavourable treatment. On Brazil’s comments, Japan would reflect on the possibility of a second version of the draft annex, although they thought that more discussion on the substantive issues was necessary. The delegation concluded by noting that Japan favoured continued discussion of the measures in the *Examples* paper.

53. The delegation of the United States noted that, in commenting on paragraph 6 of Japan’s draft annex, they had raised concerns regarding not only the language from the *Accountancy Disciplines*, but also regarding the wording of the last sentence of paragraph 6.

54. The Chairperson noted the requests by Singapore and Hong Kong, China regarding updated information on WTO jurisprudence and revision of the Secretariat necessity paper. This would include reference to material from other WTO bodies. The Secretariat said they could update and broaden the Note on necessity (Job No. 5929, dated 8 October 1999), especially by providing additional factual legal information on WTO jurisprudence, hopefully by the next WPDR meeting. Members approved the suggestion to update the necessity paper.

55. The Chairperson concluded by stating he would not attempt to make a summary, and that Japan should be heartened by the tremendous participation. Members referred to issues regarding transparency, scope, etc. that needed more reflection, and Japan had offered preliminary responses. The suggestion that Japan considered a revision to the draft annex was also raised. Further substantive discussions were needed, the Chairman stated, noting that almost all of the comments made were still preliminary, and that Members would welcome the chance to make further comments. Members agreed to retain the item on the agenda, and the Working Party took note of the comments made.

Examples Paper

56. The Chairperson noted that the second item under that agenda sub-section was the review of the informal Secretariat paper *Examples of Measures to be Addressed by Disciplines under GATS Article VI:4*, which had been revised and circulated as JOB(02)/20/Rev.5, dated 29 April 2003. As he had noted earlier in the meeting, and delegations had mentioned in their interventions, there was the notion of “value-added” in continued discussions. In his informal consultations, Members had indicated they wished to offer additional substantial comments and to add more examples, as well as give more opportunities for developing country participation. Some Members had also suggested examining the measures in the *Examples* paper in light of the provision of Japan’s draft annex, he stated.

57. Moving to informal mode, the Chairperson then opened the floor for comments.

58. The Chairperson summarized the informal discussions by pointing out that the idea of working through the examples on the basis of Japan’s paper did not originate with the Chair. Members, in his informal consultations, had indicated they preferred to retain discussions of the *Examples* paper on the agenda. Capitals were still assessing the examples contained in the paper, he stated, especially from the perspective of their own services exporters. At the suggestion of the Chairman, Members agreed to retain discussions of the Examples paper on the agenda, and took note of the statements made.

2. Development of Disciplines for Professional Services

Recognition Issues

59. Returning to formal mode, the Chairperson noted that the next item on the agenda was the *Development of Disciplines for Professional Services*, with the first sub-item being *Recognition Issues*. He observed that, at the previous meeting, under Item D of the agenda, the Working Party had invited the OECD to give an informal presentation of their recent paper on MRAs, which had been circulated in advance as JOB(03)/28, dated 13 February 2003. Ms. Julia Neilson of the OECD gave an excellent presentation, which was followed by extensive comments from Members. Members also agreed to have further discussions at the current meeting.

60. Before opening the floor for further comments related to the OECD paper, the Chairperson noted that, since the previous meeting, the United States had circulated a formal paper on MRAs, as document S/WPDR/W/23, dated 10 March 2003. In addition, the European Communities had requested to make an oral presentation on recognition. The Chairman then asked the United States to introduce their paper, followed by the EC intervention.

61. The delegation of the United States stated that their submission was for information purposes only, noting that it was also posted on the USTR website. The paper explained the nature of recognition agreements, based on U.S. experience. There was no implied linkage between work on recognition agreements and the work on Article VI:4 within the Working Party. The United States still had questions regarding the relationship between MRAs under Article VII, and their place in the discussions on VI:4. If an MRA existed, the delegation stated, then regulations were necessary for implementing its provisions. The discussion of such regulations was relevant to the WPDR. If the discussion, however, was solely with regard to MRAs in general, i.e. as a subject for negotiations, the United States did not see a linkage with the work in the WPDR.

62. The delegation of the European Communities said they had received some requests during bilateral negotiations for information on mutual recognition within the Single Market, and that their presentation was for information only. Although the movement of natural persons was fully liberalized within the EC, it was evident that differences in qualification systems at the national level could act as an impediment. For that reason, the EC Treaty contained specific provisions for the development of European legislation to deal with the situation (Article 40 and 47). For professional services, there have been two kinds of legislation regarding the recognition of qualifications. The first system consisted of harmonizing the conditions for access to, and the exercise of, specific professions, namely doctors, midwives, veterinary surgeons, dentists and, to some extent, auditors. Under the relevant Directives, which were available on the EC website (nos. 9316, 80155, 781027, 78687, 84253, respectively), recognition became automatic, as the systems were virtually identical.

63. There was a disadvantage, however, the delegation of the European Communities stated, as the process of harmonization was extremely burdensome. It was realized that, within the European Union, there was a high degree of convergence between different national systems and, therefore, it might be possible to adopt General Directives instead (they were subsequently adopted, as nos. 8948 and 9251). As the General Directives assumed a high degree of convergence, the host country was consequently required to give due consideration to the qualifications presented. The host country, however, still had the right to require specific traineeships or aptitude tests, to bridge any gaps with the home country. For legal services there were specific Directives (nos. 77249, 9805, and the General Directive 8948), as they were specifically linked to national laws. The delegation concluded by stating that their presentation gave an idea of how hard it was to achieve recognition in the European Union, despite full liberalization and a high level of convergence. The system took a lot of time to establish and put into place, the delegation stated, and was only automatic when there had been previous harmonization of national systems.

64. The Chairperson then opened the floor for comments on the U.S. paper, the EC presentation, and the OECD paper.

65. The delegation of Thailand, regarding the U.S. comments on MRAs, said their view was that recognition was directly linked to the issue of qualifications, and therefore it was legitimately within the scope of deliberation on VI:4. The delegation agreed with the United States that MRAs did not automatically confer licensure. Nevertheless, there was a need for the recognition of experience and other qualifications, especially for services suppliers from developing countries. On the OECD paper, the delegation said there were many agreed points, e.g. that it was easier for intra-corporate transferees to achieve recognition. SMEs, however, especially those from developing countries, still faced problems with recognition.

66. While agreeing that MRAs were not a panacea for market access under Mode 4, the delegation of Thailand emphasized that the lack of recognition of equivalence was a problem, resulting in *de facto* nullification or impairment, i.e. non-violation. Some of the OECD suggestions were very interesting, for example, increasing information about, and access to, existing MRAs. Noting that the WPDR was already consulting with international professional organizations, the delegation asked if it was possible to ask such organizations to provide information on MRAs. Another interesting suggestion in the OECD paper was for a possible plurilateral WTO agreement on MRAs. In any case, mutual recognition was a possible area for commitments under GATS Article XVIII, the delegation noted.

67. The Chairperson asked Members to address the question of asking international organizations about MRAs.

68. The delegation of India noted the EC difficulties with recognition, as well as the fact that paragraph 6 of the U.S. paper said the USTR encouraged MRAs. They hoped that Members would respond positively to requests from developing countries to negotiate MRAs. The supply of services under Mode 4 was certainly adversely affected by the lack of recognition, the delegation stated, as highlighted in the *Examples* paper. During discussions in the last WPDR meeting, it was noted that Article VII was an enabling clause. As noted in the OECD paper, as well as during the WPDR discussions, much more could be done to operationalize Article VII, the delegation stated. This could include work under Article VI:6 on adequate procedures, and development of a general framework for MRAs, as well as other measures mentioned in India's proposal. India agreed with Thailand's suggestion to ask international organizations, the delegation stated.

69. The delegation of Canada, regarding the U.S. intervention, reiterated Canada's support in discussing elements related to recognition. They noted that Canada was supportive of discussing these elements in the context of Article VII, which had been addressed in the Council for Trade in Services. The WPDR already had a full agenda, the delegation stated, and therefore it was necessary to separate out issues directly related to VI:4, leaving other issues to the appropriate WTO bodies.

70. The delegation of Argentina, on the EC presentation, asked if the work on harmonization was a government initiative, and whether the work still continued. They also asked on any differences between the treatment of EC services suppliers and those outside the EC, as well as about any procedures for temporary or simplified recognition. Regarding MRAs, the delegation said the WPDR should continue to deal with the subject, as it was more related to Article VI:4.

71. The delegation of Chile seconded Argentina's questions. On paragraph 3 of the U.S. paper, regarding the issue of commonality, they asked if the United States could give further information regarding the model rules, including where they could be found. On paragraph 6, Chile wished to have greater detail regarding accession to the agreements listed in paragraph 7, i.e. on which body should be approached. The delegation said they agreed with Thailand's suggestion. On where to deal

with the subject of MRAs, Chile was open-minded, but they wished to see it dealt with wherever possible, including in the WPDR, as some MRAs might have overly burdensome requirements.

72. The delegation of the European Communities noted that the harmonization proposals originated from the EC Commission, and were prepared in conjunction with all the stakeholders. Harmonization was now practically abandoned, the delegation stated, and occurred only if there was specific interest and likely value-added with respect to the general directive. Non-EU suppliers were not covered, and this was clearly reflected in the EU schedule. The EU presentation was for transparency, as recognition was an issue on the agenda, but the EC tended to agree with the United States that the WPDR did not have a mandate to deal directly with MRAs.

73. The representative from Mexico stated that, as noted in paragraph 50 of the previous meeting's Minutes, Mexico considered MRAs to be a fundamental subject, which should continue to be discussed in the Working Party. He agreed with Thailand's proposal, and noted that other WTO work, especially that related to the TBT Agreement, could also be useful in regard to mutual recognition. MRAs were not a panacea, he agreed, and in some cases could create additional barriers. The representative suggested that the Secretariat could investigate the TBT work. The Chairman noted that the Mexican representative's insights as the current TBT Chair could be very useful for the Working Party.

74. The representative from Hong Kong, China said that the lack of recognition represented a potential barrier to the supply of services. Members needed to distinguish between the issue and the possible means of addressing it, i.e. the issue of qualification requirements and procedures. The means of addressing recognition included MRAs, he stated. To the extent that MRAs were directly related to recognition, they could be discussed in the WPDR, while the actual entry into negotiations on MRAs could be dealt with elsewhere. MRAs were very difficult to achieve, and another issue was unilateral recognition, as dealt with in paragraph 19 of the *Accountancy Disciplines*. That mechanism was on an m.f.n. basis, the representative noted. Regarding making Additional Commitments on MRAs, he asked how they would result in more agreements, as there would be no guarantee of success.

75. The delegation of the United States stated that they agreed with the EC and Canada on the need to identify where the discussion of MRAs should take place. On Hong Kong, China's comments, it was important to note that the reference in Article VI:4 was to measures relating to qualifications. The U.S. paper was not intended to begin a discussion of the MRA frameworks themselves. Regarding Chile's question, the information on model rules applied to the sectors listed in the U.S. paper. Concerning accession, interested parties should contact the associations listed in the paper. Regarding Secretariat consultations on MRAs, the details received should be on an informational basis, so as not to side-track the discussions of the WPDR.

76. The delegation of Thailand supported Hong Kong, China, and reiterated that they believed recognition was part of the VI:4 work on qualifications. They agreed on the need to distinguish between the issue and the solution, the latter of which was to be found outside the Working Party. Thailand was actively pursuing MRAs outside of the WPDR, and had put the issue into its Requests, but there had as yet been no response. They were actively pursuing the issue on both a bilateral and regional basis. Thailand had no intent to negotiate MRAs under the WPDR, nonetheless they felt the issue was very important to developing countries and to Mode 4, and they very much wished to discuss the issue in the Working Party. Regarding the EC presentation, the delegation noted that the EC had stated that qualifications constituted an important impediment to the internal movement of persons. The delegation also noted Hong Kong, China's comments on Article XVIII, and stated that Thailand was asking for additional commitments on a bilateral basis regarding recognition.

77. The Chairperson summarized the discussion by noting three points. First, there was great interest in MRAs and recognition. Second was the question of whether MRAs should be discussed in the WPDR, and third was the question of Secretariat consultations with international organizations regarding MRAs. On the first and second points, he wondered if the issues were not more procedural than substantive. On the question of retaining recognition as an agenda item, if no information was received, either in the form of presentations or papers, the item would not need to be retained on the agenda. It could always be added as an agenda item, if a Member requested.

78. Regarding the third point, the Chairperson noted that asking information on MRAs could be done in conjunction with the current Secretariat consultations with international professional services organizations. Members could then ask the Secretariat to prepare a summary of the responses received, taking into account the concerns expressed by some Members. The delegations of the United States and the European Communities then stated they wished to reflect on the chair's proposal. The Chairperson concluded discussions by suggesting that the WPDR take note of the statements made.

Consultations in Professional Services

79. The Chairperson then offered the floor for further informal discussion of the Secretariat paper, *Synthesis of Results to Date of the Domestic Consultations in Professional Services*, the latest version of which had been circulated as JOB/(02)/204/Rev.1, dated 21 February 2003. He also asked if any Member wished to update the Working Party on the status of their domestic consultations. No comments were received.

80. Returning to formal mode, the Chairperson asked the Secretariat to speak briefly on the status of consultations with international professional services organizations.

81. A Secretariat representative noted that the Working Party had requested the Secretariat to consult with 22 international professional services organizations, regarding the applicability of the *Accountancy Disciplines* to their professions. Of the 22 organizations, 14 replies had been received to date, of which 7 were to indicate that a response was being prepared. Of the seven substantive responses, two were preliminary comments. The Secretariat indicated it would continue follow-up efforts to raise the level of responses.

82. The delegation of Thailand asked what should be done with the responses. The Chairperson responded by noting that over 50 per cent of the organizations contacted had made a reply. If Members wished, the Secretariat could prepare a written summary of the responses, in order to provide the comments received to Members. The delegation of Japan supported the Chair's suggestion. The delegation of Hong Kong, China also supported the Chair's suggestion, and said that a summary could be compiled of the information received, to be updated with subsequent responses.

83. The Chairperson concluded by stating that the Secretariat could prepare a written summary, to be updated on an on-going basis as new responses were received. Members approved the Chairman's suggestion to prepare a summary.

C. ORGANIZATION OF THE WPDR SEMINAR

84. The Chairperson noted that the next agenda item was the organization of the WPDR seminar. He recalled his informal consultations, where Members generally agreed on the need to clarify the nature and purpose of the proposed seminar/workshop on domestic regulation. They emphasized that a primary objective was to inform and educate regulators, trade negotiators and other relevant officials on the background and progress to date of the work in the WPDR, as well as on the regulatory implications of disciplines for developing countries. The second objective was to promote greater

understanding of regulatory authorities through a facilitated exchange of information relating to the work on VI:4 and how regulatory authorities might be affected.

85. The Chairman observed that, in general, Members wanted an “educational dialog” between regulators, negotiators, the Secretariat and selected participants from international associations. Some critical points were also raised about timing and funding. Many developing countries expressed a preference to schedule the workshop during the week of the CTS Special Session, so as to facilitate the attendance of their representatives. Ideas on timing to accommodate this preference were sent to the Secretariat. Funding was also a critical issue, in order to facilitate the attendance of one, or preferably two, developing country representatives from capitals. Members generally noted that the workshop would have mitigated valued if only Geneva-based representatives were able to attend. The Secretariat was exploring various options in this regard.

86. The Chairperson noted that the issue of funding could also influence the timing of the seminar. Although most Members preferred to have the workshop during the July cluster of meetings, the issue of funding was crucial. The Chairman then asked the Secretariat to update Members on the funding situation.

87. A Secretariat representative stated that, as promised at the last WPDR meeting, they had explored the possibility of securing funding for the participation of capital-based officials, along the lines of the previous year’s GATS Scheduling Workshop. At that time, the success in obtaining ad hoc funding was due to that workshop’s direct link to the Offers phase of the services negotiations. The Secretariat had tried again, but this time faced the standard operating procedure of having to go through the budget committee. Therefore, it was not possible to provide funding in time for a seminar in July.

88. The Secretariat representative noted that, in addition to funding, there were other outstanding issues include the seminar programme. Based on comments received at the last formal meeting, as well as consultations by the Chair, the Secretariat had circulated a revised Outline, as JOB(03)/35/Rev.1, dated 7 May 2003. Members needed to clarify the issue of the intended audience, which would help to finalize the substantive details of the seminar programme. Regarding OECD and UNCTAD participation in the seminar, they had not yet been included in the Outline, as the Secretariat was consulting on the substance of their contributions.

89. The Chairperson then invited Members to offer their comments.

90. The delegation of Hong Kong, China thanked the Secretariat, and said they would have wished to hold the workshop earlier, but that the participation of capital-based officials was more important. The delay could also help to finalize the seminar Outline, the delegation noted. The Chairperson agreed that postponing the workshop would give Members more time for the Outline.

91. The delegation of Indonesia supported the holding of a workshop. Regarding the draft Outline, the delegation wondered if the current version of Japan’s draft annex should be included. The delegation of Canada suggested that a quick discussion of the Outline, followed by informal consultation with donors on funding, might permit the workshop to be held in July.

92. The delegation of Japan had no instructions on timing, but tended to agree with Hong Kong, China. Regarding the substance, Japan noted the inclusion of their draft annex in the Outline, and stated they would be willing to make a presentation. The delegation of the European Communities, on timing, said that the workshop would have little value without funding, and therefore should be postponed.

93. The delegation of Australia agreed with previous speakers on the need to delay the seminar, in order to explore further the options for funding. The delegation of Columbia supported holding the seminar, and agreed that the presence of capital-based regulators was essential. They agreed that the seminar could be postponed if funding was not available. The delegation of Cuba agreed that the seminar should be delayed until funds could be made available for the participation of developing-country representatives.

94. The delegation of the United States agreed with other delegations on the importance of finding adequate funding to ensure broad participation. They supporting delaying the seminar in order to ensure greater funding and increased participation.

95. The Chairperson summarized the discussions by stating that the funding issue was of critical importance for most delegations, both developing and developed, and therefore the Workshop should be postponed until the October cluster of meetings. Members approved the Chair's suggestion. Mindful of the time, the Chairperson concluded by stating that he would hold consultations on the revised Outline.

D. DATE OF NEXT MEETING

96. The Chairperson stated that the last item on the agenda was the date for the next meeting. As a result of the postponement of the workshop on domestic regulation, he proposed that the next meeting be held during the week beginning 30 June 2003, in conjunction with the next CTS and Special Session meetings. Members approved the Chairperson's suggestion.
