

# WORLD TRADE ORGANIZATION

RESTRICTED

**S/WPPS/W/16**

24 June 1997

(97-2628)

---

**Working Party on Professional Services**

Original: Spanish

## COMMUNICATION FROM BRAZIL, CHILE, COLOMBIA AND MEXICO

The following communication, dated 24 June 1997, has been received from the delegations of Brazil, Chile, Colombia and Mexico with the request that it be circulated for consideration by Members at the meeting to be held on 26 June 1997.

---

### I. GENERAL

1. At the meeting of the Working Party on Professional Services (WPPS) held on 15 May, the Chairman invited delegations to propose guidelines for the work provided for in the Decision on Professional Services adopted at the Marrakesh meeting in April 1994 and for the achievement of the objectives defined by the Ministers at the Singapore Ministerial Conference in December 1996.<sup>1</sup>

2. We consider it appropriate to distribute this document which contains preliminary ideas to stimulate discussion on the type of disciplines that would be relevant to the accountancy sector. The ideas contained in this document constitute a preliminary appraisal which could be modified as and when a better understanding is obtained of the issues involved in the discussion of potentially applicable disciplines. At the same time, they are without prejudice to the individual positions adopted in the course of the detailed study of these subjects.

3. The Decision on Professional Services identifies a series of aspects in the accountancy sector to which the WPPS should give priority consideration. They are the following:

- (a) "developing multilateral disciplines relating to market access so as to ensure that domestic regulatory requirements are: (i) based on objective and transparent criteria, such as competence and the ability to supply the services; (ii) not more burdensome than necessary to ensure the quality of the service, thereby facilitating the effective liberalization of accountancy services;
- (b) the use of international standards and, in doing so, it shall encourage the cooperation with the relevant international organizations as defined under paragraph 5(b) of Article VI, so as to give full effect to paragraph 5 of Article VII;
- (c) facilitating the effective application of paragraph 6 of Article VI of the Agreement by establishing guidelines for the recognition of qualifications".

---

<sup>1</sup>The work of the Working Party on Professional Services comes within the regulatory framework of the General Agreement on Trade in Services (GATS).

4. With regard to the use of international standards, it may be recalled that, in paragraph 17 of the Report to the General Council by the Council for Trade in Services (S/C/3) on the activities of the latter's subsidiary bodies in 1996, it is stated that "the main role of the Working Party in this area is to keep track of work going on elsewhere and encourage cooperation with relevant international organizations". In this connection, the Singapore Ministerial Declaration encouraged the "successful completion of international standards in the accountancy sector" by the international organizations mentioned therein, WT/MIN(96)/DEC.

5. Moreover, in connection with action to facilitate the effective implementation of paragraph 6 of Article VI of the GATS, the WPPS recently concluded its work with the adoption of non-binding "guidelines for mutual recognition agreements or arrangements in the accountancy sector", S/L/38.

6. Consequently, in the matter of priority tasks, the WPPS should tackle the question of the development of multilateral disciplines referred to in paragraph 2(a) of the Decision. There are a number of Secretariat studies<sup>2</sup> and opinions expressed by delegations in different contexts, which will be most helpful for dealing with this aspect of the Decision.

7. We consider that documents S/WPPS/W/9 and S/WPPS/W/11 are two particularly important points of reference for moving our work forward. In our view, the first of these documents sums up the main disciplines and existing elements of the Agreements on Technical Barriers to Trade and on Import Licensing Procedures which could be relevant to the development of disciplines in the accountancy sector.

8. Document S/WPPS/W/11 gives an overview of the various factors at work in the regulation of the accountancy sector, based on a representative sample of WTO Members. The combined reading of these documents enables us to identify those aspects that are relevant to the accountancy sector, those which are not applicable and the elements that are missing from the WTO Agreements in force.

9. A reading of these documents shows that the harmonization of legislation is not a workable option. On the other hand, the task of developing disciplines should be tackled in a manner sufficiently flexible to cover the different ways of regulating the various aspects of accountancy services (qualifications, licences and technical standards), with due account being taken, in particular, of the legitimate general policy objectives it is wished to achieve.

10. The WPPS should focus on issues which have a bearing on the disciplines applicable to measures affecting the various aspects of accountancy sector regulation (qualifications, licences and technical standards), particularly in those cases where Members have undertaken specific commitments (Article VI).

11. In fact, the work carried out by the Secretariat in the accountancy sector shows that, for a variety of reasons ranging from differences in educational systems, systems of law and cultural identity to questions of an ethical nature, it is not possible to say what measures - apart from those referred to in Articles XVI and XVII - are not *a priori* consistent with the criteria of objectivity and transparency, not more burdensome than necessary to ensure the quality of the service and, in the case of licensing procedures, not in themselves a restriction on the supply of the service (Article VI.4).

12. A further reduction in the trade barriers that might be implicit in national regulations would constitute a favourable outcome to the work of the WPPS. However, the Decision on Professional Services only refers to developing multilateral disciplines relating to measures - other than those provided

---

<sup>2</sup>See in particular S/WPPS/W/6, S/WPPS/W/9 and S/WPPS/W/11.

for in Articles XVI and XVII - that could constitute obstacles to trade in accountancy services, and such measures could be analysed in the future in the light of the disciplines developed within the WPPS. This would contribute to more concrete progress in the work of the Working Party, making it unnecessary to draw up a list of measures that are "not permitted" and hence - by default - of measures that are "permitted".<sup>3</sup>

13. This would facilitate the future adoption by the WTO Members of new regulatory frameworks based on measures in harmony with these disciplines, which could be adopted and implemented in the respective legislative systems at a cost commensurate with the aims pursued and consistent with the various existing real-life situations.

14. For example, the situation might arise where a particular measure in specific circumstances is "more burdensome than necessary", but the available alternative measure(s) which might be applied in its place is/are too onerous to be implemented by the country in question. Situations of this kind, and possible variations, are extremely difficult to identify in every detail. It would therefore appear to be more appropriate to concentrate on an approach which would give the GATS the necessary tools to go on dealing with the different situations, as and when they arise, in accordance with the contexts in which they emerge, instead of tackling particular measures that are considered to be barriers to trade.<sup>4</sup>

## II. PROPOSALS CONCERNING THE SCOPE OF DISCIPLINES IN THE ACCOUNTANCY SECTOR

15. In developing disciplines a distinction should be made between, on the one hand, the objectives it is desired to achieve and the means of achieving them and, on the other hand, the procedures for administering them in such a way that they are not in themselves a restriction on the supply of the service. At the same time, it might be appropriate, when assessing whether this requirement has been met, to consider the costs which might be incurred by a Member maintaining these regulations in adopting and applying other regulatory options, and whether they are proportional (in keeping) with the objectives pursued.

16. These disciplines could provide for treatment formally different from that accorded to like services and service suppliers of the Member itself (Article XVII).

### 17. Qualifications and licences in the accountancy sector

18. With regard to the measures relating to qualification requirements<sup>5</sup>, it does not seem necessary for the WPPS to address these questions as well, since they concern aspects which largely reflect the different existing educational, legal and cultural systems about which it is not possible to make value judgements like those implicit in concepts such as "not more burdensome than necessary to ensure

---

<sup>3</sup>Document S/WPPS/W/2 contains a list of possible general and specific restrictions on trade in accountancy services. Some of the general measures are subject to disciplines under the GATS. A number of specific measures are also dealt with in some articles of the GATS (e.g. those relating to nationality), while others are applied on a non-discriminatory basis as part and parcel of the regulatory frameworks and are aimed at achieving important general policy objectives.

<sup>4</sup>This is all the more necessary if it is borne in mind that the future agenda of the WPPS may have to take up the matter of other professional services.

<sup>5</sup>Defined as "substantive requirements which a professional service supplier is required to fulfil in order to obtain certification or a licence. They normally relate to matters such as education, examination requirements, practical training, experience or language requirements", S/WPPS/W/9.

the quality of the service". Consequently, these measures are something given and are, basically though not exclusively, subject to the transparency and non-discrimination requirements forming part of the present provisions of the GATS.

19. In the context of the disciplines which must be developed, the Members of the WTO should be encouraged to approach these questions bilaterally through the negotiation of mutual recognition agreements. The disciplines in Article VII of the GATS should ensure that these procedures do not become a form of covert discrimination between Members of the WTO.

20. Licensing requirements in the accountancy sector

- Members shall take such reasonable measures as may be available to them to ensure that licensing requirements are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, these requirements should not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create.
- In preparing, adopting or applying licensing requirements an effort should be made not to impose on the foreign supplier a prior condition unrelated to its ability to supply the service.
- Such legitimate objectives are, *inter alia*: the prevention of deceptive and fraudulent practices, measures to deal with the effects of a default on service contracts; ensuring the equitable or effective imposition or collection of direct taxes in respect of services or service suppliers of other Members, consumer protection, ensuring the quality of the service.

21. Qualification and licensing procedures in the accountancy sector

- Rules governing qualification and licensing procedures shall be neutral in application and administered in a fair and equitable manner.
- The rules and all the information concerning procedures for submission of applications needed by natural and juridical persons in order to be able to submit such applications and the administrative body or bodies to be approached shall be made public. Any exception, derogations or changes in or from the rules concerning procedures shall be made public.
- The application and, where applicable, renewal forms shall be as simple as possible. Application procedures and, where applicable, renewal procedures shall be as simple as possible. The applicants shall be allowed a reasonable period for the submission of applications.
- Members shall take such reasonable measures as may be available to them to ensure that procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. This means, *inter alia*, that the procedures for evaluating applications shall not be more strict or applied more strictly than is necessary to ensure that the service suppliers fulfil the qualification and licensing requirements, taking account of the risks non-fulfilment would create.
- The competent authorities of the Member concerned shall, within a reasonable period of time after the submission of an application considered complete under domestic laws

and regulations, inform the applicant of the decision relating to his application. At the request of the applicant, the competent authorities of the Member shall provide information concerning the status of the application without undue delay.

22. Technical standards in the accountancy sector

23. As pointed out in document S/WPPS/W/9, before proceeding to develop disciplines in the field of technical standards, it is necessary to consider what a technical standard in services is and to analyse the questions relevant to the adoption of a working definition. As far as accounting services are concerned, it would appear that technical standards deal with questions relating to the presentation of financial reports, audits and their content.

24. From a preliminary analysis of this material, it would appear that measures of this type should fulfil the following requirements:

- Members shall take such reasonable measures as may be available to them to ensure that technical standards are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical standards shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create.
- Such legitimate objectives are, *inter alia*: the prevention of deceptive practices, measures necessary to deal with the effects of default on services contracts; ensuring the equitable or effective imposition or collection of direct taxes in respect of services or service suppliers of other Members, consumer protection, and ensuring the quality of the service.
- Members shall ensure that all technical standards adopted are published promptly or made otherwise available to the interested parties of other Members in order that the latter may become acquainted with their contents.

25. We consider that the questions dealt with in this communication and the possible practical application of these disciplines to the accountancy sector are new aspects which should be approached gradually. In this connection, the discussion of the possible legal form that these disciplines might take is still pending. However, it seems that given the time-frame indicated in the Singapore Ministerial Declaration, we should be realistic in this respect if we wish to complete our task in 1997.