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DISCIPLINES ON DOMESTIC REGULATION

Revision[*]

The following communication, dated 10 December 2017, is being circulated at the request of the delegations of Albania; Argentina; Australia; Canada; Chile; Colombia; Costa Rica; the European Union; Hong Kong, China; Iceland; Israel; Japan; the Republic of Kazakhstan; the Republic of Korea; Liechtenstein; the former Yugoslav Republic of Macedonia; Mexico; the Republic of Moldova; Montenegro; New Zealand; Norway; Peru; the Russian Federation; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Turkey; Ukraine; and Uruguay.

Since the last Ministerial Conference, we have made important progress in the Working Party on Domestic Regulation (WPDR) on proposed Disciplines on Domestic Regulation pursuant to the mandate contained in Article VI:4 of the General Agreement on Trade in Services.

We welcome the high level of engagement across the Membership that has contributed to shaping the proposal from the initial identification of elements for inclusion in June 2016 (JOB/SERV/236); the submission of individual elements in response to calls for focused pragmatic proposals between September 2016 and June 2017 (JOB/SERV/239, JOB/SERV/250, JOB/SERV/251, JOB/SERV/252, JOB/SERV/257, JOB/SERV/258 and JOB/SERV/261); the consolidated text proposal in September 2017 (JOB/SERV/268); and the revised text proposal in October 2017 (JOB/SERV/272). We have introduced several subsequent revisions to accommodate further proposals from Members, respond to concerns and questions, and include additional co-sponsors.

The proposal reflects a careful balance of ambition and do-ability, informed by many years of negotiations in the WPDR. Outcomes on domestic regulation would deliver real benefits for all services suppliers – including for developing and least developed country (LDC) service suppliers, and especially for women and MSMEs – through reduced regulatory red tape, streamlined procedures for qualifications and licensing and increased transparency. The proposal provides for targeted technical assistance and capacity building to strengthen institutional and regulatory capacity to support implementation, as well as to assist developing countries and LDCs to develop their services supply capacity and to meet regulatory requirements in export markets.

We look forward to a productive discussion on services domestic regulation at the 11th Ministerial Conference in Buenos Aires.

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[*] This revision adds the former Yugoslav Republic of Macedonia as a co-sponsor and adds Mexico, Switzerland and Ukraine as co-sponsors of 6.2 Women's Economic Empowerment.

DISCIPLINES ON DOMESTIC REGULATION

1 GENERAL PROVISIONS

1.1 Recognising the difficulties which may be faced by service suppliers, particularly those of developing country Members, in complying with measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards of other Members and in particular, the specific difficulties which may be faced by service suppliers from least-developed country Members, the Members have agreed the following disciplines on Domestic Regulation with the objective of elaborating upon the provisions of the General Agreement on Trade in Services ("the Agreement"), pursuant to Article VI.4 of the Agreement.

1.2 Members recognize the right to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet their policy objectives. These disciplines shall not be construed to prescribe or impose particular regulatory approaches or any particular regulatory provisions in domestic regulation.

1.3 Nothing in these disciplines shall be construed as diminishing the rights and obligations of any Member under the Agreement. All provisions of the Agreement, including Articles III*bis, XIV* and XIV*bis*, apply to these disciplines.

1bis SCOPE

1*bis*.1 These disciplines apply to measures by Members relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards affecting trade in services where specific commitments are undertaken. They do not apply to any terms, limitations, conditions, or qualifications set out in a Member's schedule pursuant to GATS Article XVI or XVII.

1*bis*.2 For the purpose of these disciplines, "authorisation" means the granting of permission to a person to supply a service, as a result of a procedure a person must adhere to in order to demonstrate compliance with licensing requirements, qualification requirements or technical standards.

2 ADMINISTRATION OF MEASURES

Submission of Applications

2.1 Each Member shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorisation. A Member may require multiple applications for authorisation where a service is within the jurisdiction of multiple competent authorities.

Application Timeframes

2.2 Where authorisation is required for the supply of a service, the competent authorities of a Member shall:

(a) to the extent practicable, permit an applicant to submit an application at any time; and

(b) allow a reasonable period for the submission of an application where specific time periods for applications exist.

Electronic Applications and Acceptance of Copies

2.3 Where authorisation is required for the supply of a service, the competent authorities of a Member shall:

(a) taking into account their competing priorities and resource constraints, endeavour to accept applications in electronic format; and

(b) accept copies of documents, which are authenticated in accordance with the Member's domestic law, in place of original documents, unless they require original documents to protect the integrity of the authorisation process.

Processing of Applications

2.4 Where authorisation is required for the supply of a service, the competent authorities of a Member shall:

(a) to the extent practicable, provide an indicative timeframe for processing of an application;

(b) to the extent practicable ascertain without undue delay the completeness of an application for processing under domestic laws and regulations;

(c) in the case of an application considered complete under domestic laws and regulations, within a reasonable period of time after the submission of the application, ensure that the processing of the application is completed, and that the applicant is informed of the decision concerning the application, and to the extent possible in writing[1];

(d) at the request of the applicant, provide without undue delay information concerning the status of the application;

(e) in the case of an application considered incomplete for processing under domestic laws and regulations, within a reasonable period of time, to the extent practicable:

i. inform the applicant that the application is incomplete;

ii. at the request of the applicant provide guidance on why the application is considered incomplete;

iii. provide the applicant with the opportunity[2] to provide the additional information that is required to complete the application; and

where none of the above is practicable, and the application is rejected due to incompleteness, ensure that the applicant is informed within a reasonable period of time; and

(f) in the case of a rejected application, to the extent possible, either upon their own initiative or upon the request of the applicant, inform the applicant of the reasons for rejection and, where applicable, the procedures for resubmission of an application. An applicant should not be prevented from submitting another application solely on the basis of a previously rejected application.

2.5 The competent authorities of a Member shall ensure that authorisation, once granted, enters into effect without undue delay subject to the applicable terms and conditions.

[1] Competent authorities can meet this requirement by informing an applicant in advance in writing, including through a published measure, that lack of response after a specified period of time from the date of submission of the application indicates either acceptance or rejection of the application. For greater certainty, "in writing" may include in electronic form.

[2] For greater certainty, such opportunity does not require a competent authority to provide extensions of deadlines.

Fees

2.6 Each Member shall ensure that the authorisation fees[3] charged by the competent authority are reasonable, transparent, and do not in themselves restrict the supply of the relevant service.

Examinations

2.7 Where examinations are required for authorisation for the supply of a service, the competent authorities of a Member shall schedule such examinations at reasonably frequent intervals and provide a reasonable period of time to enable applicants to request to take the examination.

3 INDEPENDENCE

3.1 Where a Member adopts or maintains measures relating to authorisation for the supply of a service, the Member shall ensure that the competent authority reaches and administers its decisions in an independent manner.

4 TRANSPARENCY

Publication and Information available

4.1 Where a Member requires authorisation for supply of a service, further to GATS Article III, the Member shall promptly publish[4] or otherwise make publicly available the information necessary for service suppliers or persons seeking to supply a service to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorisation. Such information shall include, inter alia, where it exists:

a. the requirements and procedures;

b. contact information of relevant competent authorities;

c. fees;

d. technical standards;

e. procedures for appeal or review of decisions concerning applications;

f. procedures for monitoring or enforcing compliance with the terms and conditions of licenses or qualifications;

g. opportunities for public involvement, such as through hearings or comments;

h. indicative timeframes for processing of an application.

Enquiry Points

4.2 Each Member shall maintain or establish appropriate mechanisms for responding to enquiries from service suppliers or persons seeking to supply a service regarding the measures referred to in paragraph 1*bis*.1.[5] Such enquiries may be addressed through the enquiry and contacts points established under Articles III and IV of the GATS or any other mechanisms as appropriate.

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[3] Authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

[4] For purposes of these disciplines, "publish" means to include in an official publication, such as an official journal, or on an official website. Members are encouraged to consolidate electronic publications into a single portal.

[5] It is understood that resource constraints may be a factor in determining whether a mechanism for responding to enquiries is appropriate.

Opportunity to Comment and Information before Entry into Force

4.3 To the extent practicable and in a manner consistent with its legal system for adopting measures each Member[6] shall publish in advance its laws and regulations of general application it proposes to adopt in relation to matters falling within the scope of paragraph 1*bis*.1, or publish in advance documents that provide sufficient details about such a possible new law or regulation to allow interested persons and other Members to assess whether and how their interests might be significantly affected.

4.4 To the extent practicable and in a manner consistent with its legal system for adopting measures each Member is encouraged to apply paragraph 4.3 to procedures and administrative rulings of general application it proposes to adopt in relation to matters falling within the scope of paragraph 1*bis*.1.

4.5 To the extent practicable and in a manner consistent with its legal system for adopting measures each Member shall provide interested persons and other Members a reasonable opportunity to comment on such proposed measures or documents published under paragraph 4.3 or 4.4.

4.6 To the extent practicable and in a manner consistent with its legal system for adopting measures each Member shall consider[7] comments received under paragraph 4.5.

4.7 In publishing a law or regulation referred to in paragraph 4.3, or in advance of such publication, a Member is encouraged to explain the purpose and rationale of the law or regulation.

4.8 Each Member shall, to the extent practicable, endeavour to allow reasonable time between publication of the text of a law or regulation referred to in paragraph 4.3 and the date on which service suppliers must comply with the law or regulation.

[4.9 Except in emergency situations, no law or regulation referred to in paragraph 4.3 shall enter into force prior to publication.]

5 TECHNICAL STANDARDS

5.1 Each Member shall encourage its competent authorities, when adopting technical standards, to adopt technical standards developed through open and transparent processes, and shall encourage anybody designated to develop technical standards to use open and transparent processes.

6 DEVELOPMENT OF MEASURES

6.1 Where a Member adopts or maintains measures relating to authorisation for the supply of a service, the Member shall ensure that:

(a) such measures are based on objective and transparent criteria[8];

(b) the procedures are impartial, and that the procedures are adequate for applicants to demonstrate whether they meet the requirements, where such requirements exist;

(c) the procedures [are reasonable and do not in themselves unduly prevent] fulfilment of requirements.

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[6] Members understand that paragraph 4.3 to 4.6 recognize that Members have different systems to consult interested persons and other Members on certain measures before they are final, and that the alternatives set out in paragraph 4.3 reflect different legal systems.

[7] This provision does not place any obligation on the final decision of a Member that adopts or maintains any measure for authorisation for the supply of a service.

[8] For greater certainty, such criteria may include, *inter alia*, competence and the ability to supply a service, including to do so in a manner consistent with a Member's regulatory requirements, such as health and environmental requirements. Competent authorities may assess the weight to be given to each criterion.

7 DEVELOPMENT

7.1. Recognising the difficulties which may be faced by individual developing country Members in implementing disciplines on domestic regulation, particularly difficulties relating to level of development, and regulatory and institutional capacity, a developing country Member may delay the entry into force of specified provisions of these disciplines, for periods of no longer than [x] years. These provisions and their transition periods shall be specified in [Annex 1]. Before the end of a transitional time period, upon request by the developing country Member concerned, the Council for Trade in Services may extend the time period to implement the provision, based on that Member's level of development, size of the economy, and regulatory and institutional capacity.

7.2. Least-developed country Members (LDCs) shall not be required to apply these disciplines. LDCs are nonetheless encouraged to apply these disciplines, to the extent consistent with their individual development, trade and financial needs or their administrative and institutional capacities. On graduation from LDC status, a graduated Member may delay the entry into force of these disciplines by notifying the Council for Trade in Services of transition periods in accordance with paragraph 1. Members shall give special consideration to any request by a graduated Member to the Council for Trade in Services to extend the time period to implement these disciplines.

7.3. Developed and developing Members, in a position to do so, are encouraged to provide specific technical assistance and capacity building to developing country Members and in particular LDCs, upon their request and on mutually agreed terms and conditions, aimed inter alia at:

(a) developing and strengthening institutional and regulatory capacities to regulate the supply of services and to implement these disciplines;

(b) assisting developing country and in particular LDC service suppliers to meet the relevant requirements and procedures in export markets;

(c) facilitating the establishment of technical standards and participation of developing country Members and in particular LDCs facing resource constraints in the relevant international organizations;

(d) assisting, through public or private bodies and relevant international organizations, service suppliers of developing country Members in building their supply capacity and in complying with domestic regulation in their markets.

PROPOSAL FROM ALBANIA; ARGENTINA; AUSTRALIA; CANADA; CHILE; COLOMBIA; THE EUROPEAN UNION; ICELAND; THE REPUBLIC OF KAZAKHSTAN; LIECHTENSTEIN; THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA; MEXICO; THE REPUBLIC OF MOLDOVA; MONTENEGRO; NEW ZEALAND; NORWAY; PAKISTAN; PANAMA; PARAGUAY; PERU; THE RUSSIAN FEDERATION; SWITZERLAND; UKRAINE AND URUGUAY

Women's Economic Empowerment

6.2 With a view to promoting women's economic empowerment, where a Member adopts or maintains measures relating to authorisation for the supply of a service, the Member shall ensure that such measures do not discriminate against women.[9]

[9] For greater certainty, legitimate differentiation, which means differential treatment that is reasonable and objective, and aims to achieve a legitimate purpose, and adoption by Members of temporary special measures aimed at accelerating de facto equality between men and women, shall not be considered discrimination for the purposes of this provision.

PROPOSAL FROM CHILE; HONG KONG, CHINA; THE REPUBLIC OF MOLDOVA; PERU; NEW ZEALAND AND SWITZERLAND

Necessity Test

6.3 Where a Member adopts or maintains measures relating to authorisation for the supply of a service, the Member shall ensure that such measures are not more burdensome than necessary to ensure the quality of the service.

In determining whether a Member is in conformity with the obligation under this paragraph or under (a) and (c) of paragraph 6.1, account shall be taken of international standards of relevant international organizations[10] applied by that Member.

[10] The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.