

## **Working Party on Domestic Regulation**

### **DISCIPLINES ON DOMESTIC REGULATION PURSUANT TO GATS ARTICLE VI:4**

#### Chairman's Progress Report

1. The purpose of this Report is to register the progress, so far achieved, in the negotiation of disciplines on domestic regulation pursuant to GATS Article VI:4. It also serves as the Report of the Chairman of the Working Party on Domestic Regulation to the Council of Trade in Services in Special Session.
2. Following the call by Members at the General Council meeting of December 2010 for renewed engagement across all areas of the Doha Development Agenda and in accordance with the wish expressed by Members for a Chair-driven "bottom-up" process, the Working Party has been in an intensified drafting phase since the beginning of the year.
3. A key point in the intensification of the process was the "sweeping exercise" of 10 and 11 February 2011, in which Members undertook a paragraph by paragraph reading of the draft provisions contained in the Chair's March 2009 text<sup>1</sup> and related proposals, with the aim of identifying parts of the draft that were stabilized, and those on which further work is required. Following the "sweeping exercise", which saw a reduction in the number of language options, three separate weeklong intensive drafting sessions were organised to further resolve differences regarding the content and levels of ambition of the various provisions. The first session was held from 28 February to 4 March, the second session was held from 7 to 10 March and the third session from 4 to 8 April 2011.
4. In these sessions, Members discussed and explored language options for all the disciplines envisaged in the Chair's March 2009 text. Proposals have also been submitted to add new paragraphs to the Chair's March 2009 text. These additional paragraphs relate to: a definition of "authorization"; insertion of a "necessity test" or related language; the role of mutual recognition agreements; language examinations; and an additional provision under the chapter on development.
5. Considerable efforts were made in the intensive drafting sessions to identify areas where differences could be isolated by introducing brackets into either the paragraphs of the Chair's March 2009 text or in an alternative language proposal. It should be noted that all language proposals, submitted either in a written form or introduced orally during the intensive phase of negotiations, are contained in the Chairman's Consultative Note.<sup>2</sup>
6. In the third and final drafting session of 4 to 8 April 2011, Members made a concerted effort to further reduce the language options contained in the Chairman's Consultative Note, with a view to agreeing on language that would capture any convergence achieved. In cases where the divergence

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<sup>1</sup> Second Revision, Draft Disciplines on Domestic Regulation Pursuant to GATS Article VI.4, Informal Note by the Chairman, Room Document, 20 March 2009.

<sup>2</sup> RD/SERV/46/Rev.2. This Note included language proposals up to 23 March 2011.

could not be bridged, an attempt was made to consolidate the differences into a single alternative containing a select number of brackets.

7. Overall, Members had constructive and engaged discussions but it was evident by the end of the week of 4 April that some distance still needed to be covered in order to produce a revised text. More time was also needed, as not all the provisions of the draft disciplines were given a final consideration during that week. Those paragraphs that were not revisited during the week of 4 April are those in the "introduction", the chapter on "technical standards" and paragraphs 43 to 46, as well as the proposal for an additional paragraph in the "development" chapter. These chapters had, nevertheless, been discussed on previous occasions. The Chapter XI on "institutional provisions" has not been discussed as there have been no language proposals.

8. In terms of the results from the intensification of the process and without prejudice to the working assumption that nothing is agreed until everything is agreed, the draft disciplines can now be said to be at different stages of progress. More specifically, these stages can be characterised in terms of the following three broad categories:

1. **Agreement reached on an *ad referendum* basis:** Captured in this category are those paragraphs on which agreement has been reached on an *ad referendum* basis. In these situations, the paragraph in the Chair's March 2009 text has either been maintained or replaced by a corresponding paragraph. In one instance there was *ad referendum* agreement on including an additional paragraph. In two other instances *ad referendum* agreement was reached on deleting paragraphs from the Chair's March 2009 text. Included under this category are the following:

Chapter I – INTRODUCTION

Paragraph 3

Chapter II – DEFINITIONS

Paragraphs 5, 6, 7 and 8

Chapter III – GENERAL PROVISIONS

Paragraph 10

Chapter IV – TRANSPARENCY

Paragraphs 13 and 14

Chapter V – LICENSING REQUIREMENTS

Paragraph 16

Chapter VII – QUALIFICATION REQUIREMENTS

Paragraph 29

Chapter VIII – QUALIFICATION PROCEDURES

An additional paragraph on "mutual recognition"

Chapter X – DEVELOPMENT

Paragraph 46

2. **Single alternative:** While this category reflects situations where agreement has not yet been reached, progress has been achieved and alternative language proposals have been reduced to one single negotiating text with remaining differences captured in brackets. In some cases, language proposals, which share the same basis but appear in the Chairman's Consultative Note as separate options, have been consolidated into a single alternative with brackets reflecting the differences. Included under this category are proposals made under the following paragraphs.

Chapter I – INTRODUCTION

Paragraphs 1 and 4

Chapter II – DEFINITIONS

Paragraph 9

Chapter III – GENERAL PROVISIONS

Paragraphs 11 and 12

Chapter IV – TRANSPARENCY

Paragraph 15

Chapter VI – LICENSING PROCEDURES

Paragraphs 18, 21, 22 and 26

Chapter VIII – QUALIFICATION PROCEDURES

Paragraphs 34, 35, 36,37 and 39

Chapter X – DEVELOPMENT

Paragraphs 44 and 45

3. **Multiple alternatives:** This category reflects situations where progress has been limited, and multiple alternatives and language options remain. Included in this category are proposals made under the following paragraphs:

Chapter I – INTRODUCTION

Paragraph 2

#### Chapter VI – LICENSING PROCEDURES

Paragraphs 17, 19, 20, 23, 24, 25

#### Chapter VII – QUALIFICATION REQUIREMENTS

Paragraphs 27 and 28

#### Chapter VIII – QUALIFICATION PROCEDURES

Paragraphs 30, 31, 32, 33 and 38

#### Chapter IX – TECHNICAL STANDARDS

Paragraphs 40 and 41

#### Chapter X – DEVELOPMENT

Paragraphs 42 and 43

9. All of the paragraphs agreed on an *ad referendum* basis and the two other remaining categories of paragraphs have been included in this progress report and represent the textual elements for a revised text. The task ahead for the Working Party is to convert all the remaining paragraphs under category 3 into either category 2 or, better still, to category 1. This would provide the basis for the formulation of a revised text with brackets.

10. For category 2 paragraphs, the differences have been consolidated into a single alternative, but there remains a significant number of brackets in some of the paragraphs, particularly in the chapters on licensing and qualification procedures, and in general provisions.

11. In terms of the paragraphs in category 3, there are many facets to the outstanding issues, which are both technical and policy-related in nature. There are nevertheless some gateway issues that if resolved could help unblock the discussions. For example, while not agreed to be included in the disciplines, the proposal on a definition of "authorization" would have implications for the scope of the definitions and may thus determine the application of the substantive provisions of the disciplines. Agreement on this issue could facilitate convergence throughout many parts of the disciplines. It would also help tremendously if there could be some resolution to the fundamental difference on whether the disciplines in the licensing and qualification chapters should have similar or different levels of ambition. Resolving this issue would facilitate agreement on the recurring problem of whether paragraphs under these chapters should be merged or kept separate.

12. It should be noted that the presentation of the paragraphs on licensing requirements and procedures, qualification requirements and procedures, in this report, is without prejudice to the final outcome on the structure of these chapters and whether certain paragraphs would be merged. In some cases, through the discussions, Members arrived at a single alternative with a merged paragraph. In other instances, there are multiple alternatives with language options based either on the separate paragraphs of the Chair's March 2009 text or on a proposal for a merged paragraph. The important issue of the structure of these chapters would be better addressed in light of the final content of the respective paragraphs.

13. With respect to technical standards, a key question that remains to be resolved is whether voluntary standards fall within the scope of the disciplines and if so, how can Members effectively discipline action by private actors outside the overall scope of the GATS. For the development

chapter, there are proposals for transition periods as well as other development-oriented measures. These proposals have helped frame what is desired from this chapter, though the degree of flexibility needed is something that would usually be best addressed after it is clear what strength of obligation would be imposed by the disciplines. While there are multiple alternatives to one paragraph of the introductory chapter, these are differences of a somewhat different nature, since they relate to appropriate preambular language reflecting the content of the disciplines, rather than the operational provisions themselves.

14. Apart from the differences reflected in these categories, one of the most difficult subjects in these negotiations has been the question of whether a normative standard in the form of a "necessity test" should be included into the disciplines. On this subject, Members appear to have fundamental differences on the very principle of whether such a normative standard is needed. Dedicated consultations, including text-based discussions, have been held, and the language proposals for a "necessity test" have been included in the Chairman's Consultative Note and in the textual elements contained in this progress report. While the language has been reflected in the chapters in which they were proposed, such inclusion does not in any way indicate agreement on the principle and inclusion of this subject in the disciplines, rather these serve as a placeholder for the proposals.

15. The state of play regarding the textual elements for a revised text, which form part of this progress report have been compiled into their respective categories and follow below. The Chair's March 2009 text has also been appended to this report.

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## **STATE OF PLAY**

### **CHAIR'S MARCH 2009 TEXT**

#### **I. INTRODUCTION**

1. Pursuant to Article VI:4 of the GATS, Members have agreed to the following disciplines on domestic regulation.

### **SINGLE ALTERNATIVE**

1. Having regard to the objectives in Article VI:4 of the GATS, Members have agreed to the following disciplines on domestic regulation.

## CHAIR'S MARCH 2009 TEXT

2. The purpose of these disciplines is to facilitate trade in services by ensuring that measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards are based on objective and transparent criteria, such as competence and the ability to supply the service, and do not constitute disguised restrictions on trade in services.

## MULTIPLE ALTERNATIVES

2. The purpose of these disciplines is to facilitate trade in services by ensuring that measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards are based on objective and transparent criteria, such as competence and the ability to supply the service, and do not constitute disguised restrictions on trade in services, while guaranteeing the right of Members to regulate in order to achieve public policy objectives.

### *"Necessity test"-related proposals:*

2. The purpose of these disciplines is to facilitate trade in services by ensuring that measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards are based on objective and transparent criteria, such as competence and the ability to supply the service, and do not constitute unnecessary barriers to trade in services.

2. The purpose of these disciplines is to facilitate trade in services by ensuring that measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards are, inter alia:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service; and
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

<b>CHAIR'S MARCH 2009 TEXT</b>
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3. Members recognize the right to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right. These disciplines should not be construed to prescribe or impose particular regulatory approaches or any particular regulatory provisions in domestic regulation.

<b>AGREEMENT REACHED ON AN <i>AD REFERENDUM</i> BASIS</b>
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*Same as above.*



<b>CHAIR'S MARCH 2009 TEXT</b>
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4. Members recognize the difficulties which may be faced by individual developing country Members in implementing disciplines on domestic regulation, particularly difficulties relating to level of development, size of the economy, and regulatory and institutional capacity. Members recognize 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.

<b>SINGLE ALTERNATIVE</b>
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4. Members recognize the difficulties which may be faced by individual developing country Members in implementing disciplines on domestic regulation, particularly difficulties relating to level of development, [size of the economy,] and regulatory and institutional capacity. Members recognize 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. In this context, Members take particular account of the specific difficulties which may be faced by service suppliers from Least Developed Country Members.

<b>CHAIR'S MARCH 2009 TEXT</b>
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**II. DEFINITIONS**

5. "Licensing requirements" are substantive requirements, other than qualification requirements, with which a natural or a juridical person is required to comply in order to obtain, amend or renew authorization to supply a service.

<b>AGREEMENT REACHED ON AN <i>AD REFERENDUM</i> BASIS</b>
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*Same as above.*

<b>CHAIR'S MARCH 2009 TEXT</b>
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6. "Licensing procedures" are administrative or procedural rules that a natural or a juridical person, seeking authorization to supply a service, including the amendment or renewal of a licence, must adhere to in order to demonstrate compliance with licensing requirements.

<b>AGREEMENT REACHED ON AN <i>AD REFERENDUM</i> BASIS</b>
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*Same as above.*

<b>CHAIR'S MARCH 2009 TEXT</b>
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~~7. "Qualification requirements" are substantive requirements relating to the competence of a natural person to supply a service, and which are required to be demonstrated for the purpose of obtaining authorization to supply a service.~~

<b>AGREEMENT REACHED ON AN <i>AD REFERENDUM</i> BASIS</b>
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7. "Qualification requirements" are substantive requirements relating to the competence of a natural person in relation to the supply of a service, and which are required to be demonstrated for the purpose of obtaining authorization to supply a service.

<b>CHAIR'S MARCH 2009 TEXT</b>
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8. "Qualification procedures" are administrative or procedural rules that a natural person must adhere to in order to demonstrate compliance with qualification requirements, for the purpose of obtaining authorization to supply a service.

<b>AGREEMENT REACHED ON AN <i>AD REFERENDUM</i> BASIS</b>
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*Same as above.*

<b>CHAIR'S MARCH 2009 TEXT</b>
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9. "Technical standards" are measures that lay down the characteristics of a service or the manner in which it is supplied. Technical standards also include the procedures relating to the enforcement of such standards.

<b>SINGLE ALTERNATIVE</b>
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9. "Technical standards" are measures [that prescribe] the characteristics of a service or the manner in which it is supplied. Technical standards also include the procedures relating to the enforcement of such standards.

## **PROPOSAL FOR A DEFINITION ON "AUTHORIZATION"**

*One Member proposed to add the following definition of the word "authorization" to the Chapter on Definitions.*

"Authorization" is a measure permitting a natural or legal person to engage in the supply of a service in the territory or a regional subdivision of a Member, and includes a license or a determination that such a person is qualified to supply a service. "Authorization" does not include measures:

- (a) governing the general conduct of a business, including locations, times of operation and similar conditions;
- (b) governing the safety or the impact on human, animal or plant life or health of the service or of construction or engineering activities associated with the service; or
- (c) concerning government procurement.

*During consultations, it was proposed to split this paragraph in two parts, one part with a definition of "authorization" and another part that indicates measures that should not be included under the term and could be placed in either the chapter on general provisions or paragraph 25..*

For the purpose of these disciplines, "authorization" refers to the granting of permission to a natural or legal person to supply a service in or into the territory or a regional subdivision of a Member, and includes a license or a determination that such a person is qualified to supply a service.

"Authorization" does not include measures:

- (a) governing the general conduct of business, including locations, times of operation and similar conditions;
- (b) governing the safety or the impact on human, animal or plant life or health of the service or the physical structures associated with the service; or
- (c) concerning government procurement.

<b>CHAIR'S MARCH 2009 TEXT</b>
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**III. GENERAL PROVISIONS**

10. 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 measures to the extent that they constitute limitations subject to scheduling under Article XVI or XVII.

<b>AGREEMENT REACHED ON AN <i>AD REFERENDUM</i> BASIS</b>
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*Same as above.*



## **CHAIR'S MARCH 2009 TEXT**

11. Measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards shall be pre-established, based on objective and transparent criteria and relevant to the supply of the services to which they apply.

## **SINGLE ALTERNATIVE**

11. Measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards shall be:

(a) based on objective<sup>[1]</sup> and transparent criteria<sup>[2]</sup> and

(b) clearly related to the objectives of the measure at issue and to the service being regulated.

Applications for licensing and/or qualifications shall be examined under measures in force at the date of application. Where pending applications are to be examined under amended or replaced measures, the Member shall promptly inform all applicants and provide reasonable time to such applicants to adapt their applications to such amended/new measures.

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[<sup>1</sup> Members understand that objective criteria include criteria that may not be quantifiable, such as competence, ability to supply the service and environmental, social and health effects.]

[<sup>2</sup> Members understand that in reaching decisions a competent authority may balance competing criteria. ]

## **"NECESSITY TEST"-RELATED PROPOSALS**

*One Member proposed to add paragraph 11bis to the Chapter on General Provisions:*

[11bis. Members shall ensure that measures relating to licensing requirements and procedures, technical standards and qualification requirements and procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary barriers to trade in services. For this purpose, Members shall ensure that such measures are not more trade-restrictive than necessary to fulfil specific national policy objectives, including to ensure the quality of a service.]

*Another Member proposed to add the following paragraph to the Chapter on General Provisions:*

[The content of the measures should be reasonable in light of ensuring the quality of the service, taking into account such elements as the views and needs of the service providers.]

## CHAIR'S MARCH 2009 TEXT

12. Nothing in these disciplines prevents Members from exercising the right to introduce or maintain regulations in order to ensure provision of universal service, in a manner consistent with their obligations and commitments under the GATS.

## SINGLE ALTERNATIVE

*During consultations, a number of Members agreed that the paragraph could be deleted. A number of other Members preferred to retain the paragraph for the time being. Some Members were willing to consider moving this paragraph to the introductory chapter.*

[12. Nothing in these disciplines prevents Members from exercising the right to introduce or maintain regulations in order to ensure provision of universal service, in a manner consistent with their obligations and commitments under the GATS.]

## CHAIR'S MARCH 2009 TEXT

### IV. TRANSPARENCY

13. — Each Member shall publish promptly, through printed or electronic means, measures of general application relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards, as well as detailed information regarding these measures. This information shall include, *inter alia*:

- (a) — whether any authorization, including application and/or renewal where applicable, is required for the supply of services;
- (b) — the official titles, addresses and contact information of relevant competent authorities;
- (c) — applicable licensing requirements and criteria, terms and conditions of licences, and licensing procedures and fees;
- (d) — applicable qualification requirements, criteria and procedures for verification and assessment of qualifications including fees;
- (e) — applicable technical standards;
- (f) — procedures relating to appeals or reviews of applications;
- (g) — monitoring, compliance or enforcement procedures including notification procedures for non-compliance;
- (h) — where applicable, how public involvement in the licensing process, such as hearings and opportunity for comment, is provided for;
- (i) — exceptions, derogations or changes to measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards; and
- (j) — the normal timeframe for processing of an application.

Where publication is not practicable, such information shall be made otherwise publicly available.

## AGREEMENT REACHED ON AN AD REFERENDUM BASIS

13. Each Member shall publish promptly, through printed or electronic means, all measures of general application relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards. This shall include the following information, where it exists, *inter alia*:

- (a) requirements for authorization, requirements for periodic renewal of such authorization, and generally applicable terms and conditions of such authorization;
- (b) the official titles, addresses and contact information of relevant competent authorities;
- (c) applicable licensing requirements and procedures (including requirements, criteria and procedures for application and/or renewal, and applicable fees);

- (d) applicable qualification requirements and procedures (including requirements, criteria and procedures for application and/or renewal, and applicable fees);
- (e) applicable technical standards;
- (f) applicable procedures relating to appeals or reviews of decisions concerning applications for licenses and for the verification and assessment of qualifications;
- (g) applicable procedures for monitoring or enforcement of the terms and conditions of licenses and for the verification and assessment of qualifications;
- (h) where applicable, opportunity and associated procedures for public involvement such as through hearings and opportunity for comment;
- (i) established timeframe for processing of an application.

Where publication is not practicable, such information shall be made otherwise publicly available, and shall be provided to service suppliers upon request. Nothing in this paragraph shall be construed as requiring a Member to adopt or maintain any measure not otherwise required by these disciplines.

<b>CHAIR'S MARCH 2009 TEXT</b>
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14. Each Member shall maintain or establish appropriate mechanisms for responding to enquiries from any service suppliers regarding any measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards. Such enquiries may be addressed through the enquiry and contact points established under Articles III and IV of the GATS or any other mechanisms as appropriate.

<b>AGREEMENT REACHED ON AN <i>AD REFERENDUM</i> BASIS</b>
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*Same as above.*

<b>CHAIR'S MARCH 2009 TEXT</b>
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15. Each Member shall endeavour to ensure that any measures of general application it proposes to adopt in relation to matters falling within the scope of these disciplines are published in advance. Each Member should endeavour to provide reasonable opportunities for service suppliers to comment on such proposed measures. Each Member should also endeavour to address collectively in writing substantive issues raised in comments received from service suppliers with respect to the proposed measures.

<b>SINGLE ALTERNATIVE</b>
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15. Each Member shall endeavour to publish in advance any [measures] [regulations] of general application it proposes to adopt in relation to matters falling within the scope of these disciplines. Each Member [should endeavour to] [shall to the extent practicable] provide reasonable opportunities for service suppliers [and other interested parties] to comment on such proposed [measures][regulations] [prior to their entry into force]. [Each Member should also endeavour to address collectively in writing substantive issues raised in comments received from service suppliers [and other interested parties] with respect to the proposed [measures][regulations].]

<b>CHAIR'S MARCH 2009 TEXT</b>
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**V. LICENSING REQUIREMENTS**

~~16. — Where residency requirements for licensing not subject to scheduling under Article XVII of the GATS exist, each Member shall consider whether less trade restrictive means could be employed to achieve the purposes for which these requirements were established.~~

**VII. QUALIFICATION REQUIREMENTS**

~~29. — Residency requirements, other than those subject to scheduling under Article XVII of the GATS, shall not be a pre-requisite for assessing and verifying the competence of a service supplier of another Member.~~

<b>AGREEMENT REACHED ON AN <i>AD REFERENDUM</i> BASIS</b>
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*It was agreed on an ad referendum basis to delete paragraphs 16 and 29.*



## CHAIR'S MARCH 2009 TEXT

### VI. LICENSING PROCEDURES

17. Each Member shall ensure that licensing procedures, including application procedures and, where applicable, renewal procedures, are as simple as possible and do not in themselves constitute a restriction on the supply of services.

### VIII. QUALIFICATION PROCEDURES

31. Each Member shall ensure that qualification procedures are as simple as possible and do not in themselves constitute a restriction on the supply of services.

## MULTIPLE ALTERNATIVES

### *Options for a merged paragraph:*

Each Member shall ensure that licensing and qualification procedures for the purpose of obtaining authorization to supply a service are [simple,] reasonable, clear and relevant [to the underlying policy objectives], [taking into account the nature of the requirements to be met and the criteria to be assessed,] [and do not in themselves constitute a restriction on the supply of services]. [Members shall ensure that such procedures do not in themselves unduly impede fulfilment of requirements.]

Each Member shall ensure that licensing and qualification procedures are:

- (a) [simple] [as simple as possible][taking into account the nature of the requirements to be met and the criteria to be assessed,] [as simple as the nature of the requirements to be met and the criteria to be assessed permit]
- (b) [reasonable and clear] [reasonable, objective and transparent]
- (c) [based on objective and transparent criteria] [applied in an objective and impartial manner] and
- (d) [clearly] related to the objectives of the measure at issue and to the service being regulated

[and do not in themselves constitute a restriction on the supply of services.]

### *"Necessity test"-related proposals:*

17. Each Member shall ensure that licensing procedures, including application procedures and, where applicable, renewal procedures, are as simple as possible and do not in themselves constitute a restriction on the supply of services. Each Member shall ensure that no procedures are imposed other than necessary to verify the compliance with the licensing requirements by the applicant.

31. Each Member shall ensure that qualification procedures are as simple as possible and do not in themselves constitute a restriction on the supply of services. Each Member shall ensure that no procedures are imposed other than necessary to verify compliance with qualification requirements by the applicant.

<b>CHAIR'S MARCH 2009 TEXT</b>
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18. Each Member shall ensure that the procedures used by, and the decisions of, the competent authority in the licensing process are impartial with respect to all applicants. The competent authority should be operationally independent of and not accountable to any supplier of the services for which the licence is required.

<b>SINGLE ALTERNATIVE</b>
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18. Each Member shall ensure that the licensing and qualification procedures used by, and the related decisions of, any competent authority are impartial. The competent authority should reach its decisions in an independent manner.<sup>[1]</sup>

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[<sup>1</sup> 'Competent authorities' are, for purposes of these disciplines, the authorities under Article I:3(a)(i) and (ii) charged with the establishment or enforcement of licensing requirements and procedures, qualification requirements and procedures and technical standards with regard to a particular service within the territory of a WTO Member.]

## **CHAIR'S MARCH 2009 TEXT**

19. An applicant shall, in principle, not be required to approach more than one competent authority in connection with an application for a licence.

32. An applicant shall, in principle, not be required to approach more than one competent authority for qualification procedures.

## **MULTIPLE ALTERNATIVES**

19. An applicant [shall, to the extent practicable] [should] [should, in principle,] not be required to approach more than one competent authority in connection with an application for a licence.

32. An applicant [shall, to the extent practicable] [should, in principle,] not be required to approach more than one competent authority for qualification procedures.

### *Option for a merged paragraph:*

Each Member shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application required in order to obtain authorisation for the supply of a service.

## CHAIR'S MARCH 2009 TEXT

20. An applicant should be permitted to submit an application at any time, except where licenses are limited in numbers, including in public tendering. Where specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. Where possible, applications should be accepted in electronic format under the same conditions of authenticity as paper submissions.

33. An applicant should be permitted to submit an application at any time. The competent authority shall initiate the processing of an application without undue delay.

## MULTIPLE ALTERNATIVES

20. The competent authority [shall] [should] permit an applicant to submit an application at any time. Where specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. The competent authority [shall, to the extent practicable][should] accept applications in electronic format under the equivalent conditions of authenticity as paper submissions.

33. The competent authority [shall] [should] permit an applicant to submit an application at any time. Where specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. The competent authority [shall, to the extent practicable][should] accept applications in electronic format under the equivalent conditions of authenticity as paper submissions.

### *Option for a merged paragraph:*

The competent authority [shall] [should] permit an applicant to submit an application at any time. Where specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. To the extent practicable, the competent authority shall accept applications in electronic format under the equivalent conditions of authenticity as paper submissions.

## CHAIR'S MARCH 2009 TEXT

21. The competent authority shall, within a reasonable period of time after receipt of an application which it considers incomplete, inform the applicant, to the extent feasible identify the additional information required to complete the application, and provide the opportunity to correct deficiencies.

35. The competent authority shall, within a reasonable period of time after receipt of an application, which it considers incomplete, inform the applicant, to the extent feasible, identify the additional information required to complete the application, and provide the opportunity to correct deficiencies.

## SINGLE ALTERNATIVE

### *Merged paragraph:*

Where the competent authority considers that an application is incomplete [and] [or] determines that it needs additional information [to reach a decision] [for the application to be considered complete], it shall, within a reasonable period of time:

- (a) inform the applicant,
- (b) [to the extent practicable] identify the information required, and
- (c) [to the extent practicable] provide the opportunity to correct deficiencies.

<b>CHAIR'S MARCH 2009 TEXT</b>
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22. Authenticated copies should be accepted, where possible, in place of original documents.

36. Authenticated copies should be accepted, where possible, in place of original documents.

<b>SINGLE ALTERNATIVE</b>
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*Merged paragraph:*

The competent authority shall, to the extent its domestic law permits, accept authenticated copies in place of original documents.

## CHAIR'S MARCH 2009 TEXT

23. If an application for a licence is rejected by the competent authority, the applicant shall be informed in writing and without undue delay. In principle, the applicant shall, upon request, also be informed of the reasons for rejection of the application and of the timeframe for an appeal against the decision. An applicant should be permitted, within reasonable time limits, to resubmit an application.

37. If an application for verification and assessment of qualification is rejected by the competent authority, the applicant shall be informed in writing and without undue delay. In principle, the applicant shall, upon request, also be informed of the reasons for rejection of the application and of the timeframe for an appeal against the decision. An applicant should be permitted, within reasonable time limits, to resubmit an application.

## MULTIPLE ALTERNATIVES

23. If an application for a licence is rejected by the competent authority, the applicant [should] be informed in writing and without undue delay. In principle, the applicant shall, upon request, also be informed of the reasons for rejection of the application and of the timeframe for an appeal against the decision. [Where applicable,] [subject to the availability of licences,] an applicant should be permitted, within reasonable time limits, to resubmit an application.

### *Option for a merged paragraph:*

If the competent authority rejects an application, it shall inform the applicant without undue delay, and to the extent practicable in writing. It [shall] [should] inform the applicant, upon request, of the reasons for rejection of the application and where [applicable] [possible], any deficiencies that have been identified. It [shall] [should] inform the applicant of the timeframe and of the procedures for [any available] appeal against the decision. [It [shall] [should] permit an applicant to resubmit an application in accordance with the relevant authority's established procedures [, except where the relevant authority limits the number of licenses or qualification determinations].] [It shall permit an applicant to resubmit an application within reasonable time limits subject to fulfilment of prescribed requirements and procedures and availability and/or eligibility.]

## CHAIR'S MARCH 2009 TEXT

24. Each Member shall ensure that the processing of an application for a license, including reaching a final decision, is completed within a reasonable timeframe from the submission of a complete application. Each Member shall endeavour to establish the normal timeframe for processing of an application.

38. Each Member shall ensure that the processing of an application, including verification and assessment of a qualification, is completed within a reasonable timeframe from the submission of a complete application. Each Member shall endeavour to establish the normal timeframe for processing of an application.

## MULTIPLE ALTERNATIVES

24. Each Member shall ensure that the processing of an application for a license, including reaching a final decision, is completed within a reasonable timeframe from the submission of a complete application. Each Member shall [endeavour to establish][indicate] the [generally applicable] timeframe for processing of an application [or explain why such an estimation of a timeframe may not be possible].

38. Each Member shall ensure that the processing of an application, including verification and assessment of a qualification, is completed within a reasonable timeframe from the submission of a complete application. Each Member shall [endeavour to establish][indicate] the [generally applicable] timeframe for processing of an application.

### *Option for a merged paragraph:*

Each Member shall ensure that the processing of an application, including reaching a final decision, is completed within a reasonable timeframe from the submission of a complete application. Each Member shall [provide an estimation of] [indicate] [endeavour to establish] the timeframe for processing of an application [or, in case of licensing, explain why such an estimation of a timeframe may not be possible].



## CHAIR'S MARCH 2009 TEXT

25. Each Member shall ensure that a licence, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.

30. Once qualification requirements and any applicable licensing requirements have been fulfilled, each Member shall ensure that a service supplier is allowed to supply the service without undue delay.

## MULTIPLE ALTERNATIVES

25. Each Member shall ensure that a licence is granted as soon as the conditions required for authorization have been met and, once granted, enters into effect without undue delay in accordance with [the] [its] terms and conditions specified therein.

25. Each Member shall ensure that a licence, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein. Among the reasons a service supplier may not be permitted to provide immediate or continuous service is the need to comply with measures outside the scope of these disciplines. Such measures include *inter alia* any requirement, not specified in a license itself,<sup>1</sup> that relates to:

- (a) the general conduct of a business, including locations, times of operation and similar conditions;
- (b) the safety or the impact on human, animal or plant life or health of the service or of construction or engineering activities associated with the service; or
- (c) government procurement [subject to the outcome of negotiations under GATS Article XIII].

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<sup>1</sup> Other than a general requirement of adherence to applicable law.

25. Each Member shall ensure that a licence, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein. This is without prejudice to the need to attain permissions not directly related to the competence or abilities of the service provider or the quality of the service provided. Examples of such permissions include: construction permits, permits related to the time and place of the supply of the service, and health and safety regulations.

25. Each Member shall ensure that a licence, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.<sup>1</sup>

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<sup>1</sup>This is without prejudice to the need to comply with any other applicable laws and the need to obtain any ancillary approvals not directly related to the competence or abilities of the service provider or the quality of the service provided.

30. Once qualification requirements and any applicable licensing requirements have been fulfilled [and the competent authority grants permission to operate], each Member shall ensure that a service supplier is allowed to supply the service without undue delay in accordance with applicable terms and conditions.

*Options for a merged paragraph:*

Each Member shall ensure that a licence, once granted, enters into effect without undue delay in accordance with its terms and conditions. Each Member shall also ensure that, once qualification requirements and any applicable licensing requirements have been fulfilled, a service supplier is allowed to supply the service without undue delay. This is without prejudice to the fulfilment of any requirements other than the applicable qualification and licensing requirements.

Each Member shall ensure that an authorization to supply a service [is granted] as soon as the [conditions required for authorization] [licensing or qualification requirements] have been met and, once granted, enters into effect without undue delay in accordance with its terms and conditions. [This is without prejudice to the fulfilment of any requirements other than the applicable qualification and licensing requirements.]

## CHAIR'S MARCH 2009 TEXT

26. Each Member shall ensure that licensing fees<sup>1</sup> are reasonable in terms of the costs incurred by the competent authority, including those for activities related to regulation and supervision of the relevant service, and do not in themselves restrict the supply of the service.

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<sup>1</sup> Licensing 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.

39. Each Member shall ensure that any fees relating to qualification procedures are commensurate with the costs incurred by the competent authorities and do not in themselves restrict the supply of the service.

## SINGLE ALTERNATIVE

*During consultations, an alternative for paragraph 26 and an alternative for paragraph 39 was proposed:*

26. Each Member shall ensure that fees related to licensing procedures<sup>1</sup> charged by the competent authority are reasonable [and commensurate with the cost incurred]. Such fees may include the cost of activities related to regulation and supervision of the relevant service, but [may][do] not in themselves restrict the supply of the service.

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<sup>1</sup> These 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. Except in situations described in Article I:3(a)(ii) of the GATS, such fees also do not include fees charged by private entities for assessments in support of applications such as fees for privately-administered examinations or privately-generated credit reports.

39. Each Member shall ensure that fees related to qualification procedures<sup>1</sup> charged by the competent authority are reasonable [and commensurate with the cost incurred]. Such fees may include the cost of activities related to regulation and supervision of the relevant service, but [may][do] not in themselves restrict the supply of the service.

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<sup>1</sup> Except in situations described in Article I:3(a)(ii) of the GATS, such fees do not include fees charged by private entities for assessments in support of applications such as fees for privately-administered examinations or privately-generated credit reports.

## **CHAIR'S MARCH 2009 TEXT**

### **VII. QUALIFICATION REQUIREMENTS**

27. Where a Member imposes qualification requirements for the supply of a service, it shall ensure that adequate procedures exist for the verification and assessment of qualifications held by service suppliers of other Members. In verifying and assessing qualifications, where the competent authority finds it relevant, it shall give due consideration to relevant professional experience of the applicant as a complement to educational qualifications. Where the competent authority considers that membership in a relevant professional association in the territory of another Member is indicative of the level of competence or extent of experience of the applicant, such membership shall also be given due consideration.

## **MULTIPLE ALTERNATIVES**

27. Where a Member imposes qualification requirements for the supply of a service, it shall ensure that adequate procedures exist for the verification and assessment of qualifications held by service suppliers of other Members. In verifying and assessing qualifications, where the competent authority considers it relevant, it shall give due consideration to professional experience[, as a complement to educational qualifications,] and to membership in a professional association in the territory of another Member.

27. Where a Member imposes licensing or qualification requirements for the supply of a service, it shall ensure that adequate procedures exist for assessing an applicant's fulfilment of such requirements, including procedures for verification and assessment of qualifications.

## CHAIR'S MARCH 2009 TEXT

28. Provided an applicant has presented all necessary supporting evidence of qualifications, the competent authority, in verifying and assessing qualifications, shall identify any deficiency and inform the applicant of requirements to meet the deficiency. Such requirements may include, *inter alia*, course work, examinations, training, and work experience. Where appropriate, each Member shall allow applicants to fulfil such requirements in the home, host or any third jurisdiction.

## MULTIPLE ALTERNATIVES

~~28. Provided an applicant has presented all necessary supporting evidence of qualifications, the competent authority, in verifying and assessing qualifications, shall identify any deficiency and inform the applicant of requirements to meet the deficiency. Such requirements may include, *inter alia*, course work, examinations, training, and work experience. Where appropriate, each Member shall allow applicants to fulfil such requirements in the home, host or any third jurisdiction.~~

28. Provided an applicant has presented all necessary supporting evidence of qualifications, the competent authority, in verifying and assessing qualifications, [shall][may] identify any deficiency and inform the applicant of requirements to meet the deficiency. Such requirements may include, *inter alia*, course work, examinations, training, and work experience, each of which shall be based on criteria relevant for the supply of the service. The possibility of fulfilling such requirements should not be restricted to host country institutions. The possibility of meeting these requirements in the home country, including through electronic submissions, should also be provided for unless there are justifiable reasons to the contrary which should be clearly stated. Where appropriate, each Member shall also allow applicants to fulfil such requirements in any third jurisdiction.

## PROPOSAL ON LANGUAGE EXAMINATIONS

*Proposal to include a paragraph in between paragraph 29 and paragraph 30 of the Chair's March 2009 text:*

[Members should not require passage of language examinations unless they are based on meeting legitimate public policy objectives such as the safety of the consumer, ensuring quality of the services or where working knowledge of the language is essential for practice.]

<b>CHAIR'S MARCH 2009 TEXT</b>
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**VIII. QUALIFICATION PROCEDURES**

34. Where examinations are required, each Member shall ensure that they are scheduled at reasonably frequent intervals. Applicants for examinations shall be allowed a reasonable period to submit applications.

<b>SINGLE ALTERNATIVE</b>
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34. Where examinations are required, each Member shall [encourage] [to the extent practicable, ensure that] the relevant authority [to schedule] [schedules] examinations at reasonably frequent intervals. Applicants for examinations shall be allowed a reasonable period to submit applications. Each Member [shall][should], [to the extent practicable], having regard to the costs and administrative burden involved, [encourage the competent authorities to] use electronic means for conducting such examinations and [to] provide opportunities for conducting such examinations from the home country of the applicant.

<b>AGREEMENT REACHED ON AN AD REFERENDUM BASIS</b>
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*Members agreed on an ad referendum basis to include the following paragraph in the chapter on Qualification Procedures:*

Members note the role which mutual recognition agreements can play in facilitating the process of verification of qualifications and/or in establishing equivalency of education.



<b>CHAIR'S MARCH 2009 TEXT</b>
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**IX. TECHNICAL STANDARDS**

40. Members are encouraged to ensure maximum transparency of relevant processes relating to the development and application of domestic and international standards by non-governmental bodies.

<b>MULTIPLE ALTERNATIVES</b>
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40. Members are encouraged to ensure transparency of relevant processes relating to the development and application of domestic and international standards by non-governmental bodies.

40. As a matter of good practice, Members involved in the development and application of measures relating to prudential standards and standards developed and applied by non-governmental standardisation bodies, should ensure maximum transparency of relevant processes for the benefit of other Members.

## **"NECESSITY TEST"-RELATED PROPOSAL**

*A group of Members suggested adding under chapter IX a paragraph before Paragraph 40:*

Each Member shall ensure that any measures relating to application, monitoring, compliance and enforcement of technical standards are not more burdensome than necessary to ensure that a service conforms with the relevant technical standards, taking into account the risks that non-fulfilment would create.

## CHAIR'S MARCH 2009 TEXT

41. Where technical standards are required and relevant international standards exist or their completion is imminent, Members should take them or the relevant parts of them into account in formulating their technical standards, except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of national policy objectives.

## MULTIPLE ALTERNATIVES

41. Where technical standards are required and relevant international standards<sup>1</sup> exist ~~[or their completion is imminent]~~, Members [are encouraged to] [should] [shall] take them or the relevant parts of them into account in formulating their technical standards, except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of national policy objectives.

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<sup>1</sup>International standards are standards developed by relevant international organizations whose membership is open to the relevant bodies of at least all Members of the WTO.

41. Each Member shall use, as a basis for its technical standards, relevant international standards or international standards whose completion is imminent, except where such standards would be an ineffective or inappropriate means to fulfil its national policy objectives, for example because of fundamental climatic, geographical, technological or infrastructural factors.

## **"NECESSITY TEST"-RELATED PROPOSAL**

*One Member proposed to add the following paragraph to the Chapter on Technical Standards:*

No Member may prepare, adopt, maintain or apply any technical standards with a view to or with the effect of creating an unnecessary obstacle to trade between the Members. For this purpose, Members shall ensure that such measures are not more trade-restrictive than necessary to fulfil a national policy objective, taking account of the risks non-fulfilment would create. Such national policy objectives are, inter alia: the protection of human health or safety, animal or plant life or health; the protection of public morals and the maintenance of public order; national security requirements; the access to essential services; the quality of the service; professional competence; the integrity of the profession; or the prevention of deceptive and fraudulent practices. Requirements should be based on objective and transparent criteria.

## **CHAIR'S MARCH 2009 TEXT**

### **X. DEVELOPMENT**

42. A developing country Member shall not be required to apply these disciplines for a period of [X] years from their date of entry into force. Before the end of this transitional time period, upon request by a developing country Member, the Council for Trade in Services may extend the time period to implement these disciplines, based on that Member's level of development, size of the economy, and regulatory and institutional capacity.

## **MULTIPLE ALTERNATIVES**

42. A developing country Member shall not be required to apply these disciplines as they pertain to qualification requirement, qualification procedures, licensing requirements and licensing procedures as set forth in paragraphs [X through XX] for a period of 1 year from the date of entry into force of these disciplines. All other provisions of these disciplines, including general provisions, and provisions relating to transparency, shall apply to all Members from their entry into force. Before the end of this transitional time period, upon request by a developing country Member, the Council for Trade in Services may extend the time period to implement these disciplines for up to two additional years. Such request and grant of extension shall be made as follows:

- (a) A Member that maintains authorization practices not in compliance with paragraphs [X through XX], and that wishes to make use of these procedures (the "requesting Member"), shall initiate consultations with the Council for Trade in Services in respect of an extension for such authorization practices, on the basis of documentation to be submitted to the Council not later than three months after entry into force of these disciplines. This documentation shall consist of (i) an identification by the requesting Member of those authorizations for which it is seeking an extension under these procedures; (ii) a statement that the extension is necessary in light of the regulatory and institutional capacity of the requesting Member and the competent authority; and (iii) a statement, for each authorization for which it is seeking an extension under these procedures, identifying the paragraphs of these disciplines with which such authorization is not in compliance.
- (b) Not later than six months after entry into force of these disciplines, the requesting Member shall submit to the Council for Trade in Services a notification providing detailed information about the authorization for which extension is being sought, including a detailed description of the manner in which that authorization is not in conformity with paragraphs [X through XX].
- (c) Following receipt of the notifications referred to in subparagraph (b), the Council for Trade in Services shall consider those notifications, with an opportunity for Members to seek clarification of the notified information and/or additional detail with a view to understanding the nature and operation of the notified authorizations. Not later than one year from the date of entry into force of these disciplines, the Council for Trade in Services shall grant extensions for an additional two year period for those authorizations notified pursuant to these procedures, where the Council concludes that the requesting Member has demonstrated a need for such extension in light of the regulatory and institutional capacity of the Member and the competent authority.
- (d) One year following the grant of such extension, the requesting Member shall file with the Council an updating notification describing any changes in the extended

authorization, and steps being taken by the requesting Member to bring the authorization into full conformity with these disciplines. Failure to file such an updating notification shall terminate the extension.

42. (a) A developing country Member shall not be required to apply these disciplines for a period of [X] [5 to 7] years from their date of entry into force.

[Graduating LDCs shall benefit from this transitional time period from the date that their graduation becomes effective.]

(b) A developing country Member may still face particular difficulties which impair its ability to implement these disciplines after the expiry of that period due to its special financial, trade and development needs, regulatory and institutional capacity or other factors, including in circumstances related to the introduction of any new, or any changes to existing laws or regulations.

Before the end of the period referred to in paragraph (a), a developing country Member may notify the existence of those particular difficulties to the Council for Trade in Services. In such cases, that developing country Member shall be granted extensions of the period to implement these disciplines.

<b>CHAIR'S MARCH 2009 TEXT</b>
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43. A Member may accord reduced administrative fees to service suppliers from developing country Members.

<b>MULTIPLE ALTERNATIVES</b>
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43. A developed country Member shall endeavour to accord reduced administrative fees to service suppliers from developing country Members.

43. A Member may accord reduced administrative fees to service suppliers from developing country Members and in particular from LDCs.

43. A Member may, to the extent feasible, accord reduced administrative fees to service suppliers from developing country Members.

43. A Member may accord reduced administrative fees to small and medium sized enterprises or natural persons, based on financial hardship.

43. A Member may accord, to the extent feasible, reduced administrative fees to service suppliers from developing country Members and LDCs, in accordance with Article II of the GATS.

<b>CHAIR'S MARCH 2009 TEXT</b>
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44. Where circumstances allow for the phased introduction of new licensing requirements and procedures, qualification requirements and procedures, and technical standards, Members shall consider longer phase-in periods for such measures in service sectors and modes of supply of export interest to developing country Members.

<b>SINGLE ALTERNATIVE</b>
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44. Where [regulatory constraints] [circumstances] allow for the phased introduction of new licensing requirements and procedures, qualification requirements and procedures, and technical standards, [and this is in the interest of the developing country supplier,] [developed country] Members shall consider longer phase-in periods for such measures in service sectors and modes of supply of export interest to developing country Members and in particular from LDCs.



<b>CHAIR'S MARCH 2009 TEXT</b>
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45. Developed country Members, and to the extent possible other Members, shall provide technical assistance to developing country Members and in particular least-developed country Members (LDCs), upon their request and on mutually agreed terms and conditions. Technical assistance shall be 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. Such assistance may also be provided directly to the respective service suppliers.

<b>SINGLE ALTERNATIVE</b>
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45. Developed country Members, and to the extent possible other Members, [may][shall] provide technical assistance to developing country Members and in particular least-developed country Members (LDCs), upon their request and on mutually agreed terms and conditions. Technical assistance shall be 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. Such assistance may also be provided directly to the respective service suppliers.

<b>CHAIR'S MARCH 2009 TEXT</b>
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46. LDCs shall not be required to apply these disciplines. LDCs are nonetheless encouraged to apply these disciplines, to the extent compatible with their special economic situation and their development, trade and financial needs.

<b>AGREEMENT REACHED ON AN <i>AD REFERENDUM</i> BASIS</b>
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*Same as above.*

## **PROPOSAL FOR AN ADDITIONAL PARAGRAPH**

*During consultations, two Members suggested including the following language in the Chapter on Development:*

Nothing in these disciplines shall oblige a Member to take action or refrain from taking action, in a manner inconsistent with its Constitution.

<b>CHAIR'S MARCH 2009 TEXT</b>
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**XI. INSTITUTIONAL PROVISIONS**

47. The Council for Trade in Services shall establish a Committee on Domestic Regulation to oversee the implementation of these disciplines and the operation of Article VI of the GATS including any further work under Article VI:4 of the GATS.

<b>CHAIR'S MARCH 2009 TEXT</b>
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48. The Council for Trade in Services shall, upon request from any Member, review the operation of these disciplines and make recommendations as appropriate.

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Attachment:  
**Room Document**

20 March 2009

**Working Party on Domestic Regulation**

**- DRAFT -**

**DISCIPLINES ON DOMESTIC REGULATION PURSUANT TO GATS ARTICLE VI:4**

Second Revision

Informal Note by the Chairman

Please find attached a second revised draft of possible regulatory disciplines pursuant to Article VI:4 of the GATS.

This draft has been prepared, under my responsibility, with a view to registering progress in discussions that have taken place in the Working Party since February 2008. It is intended to provide a point of departure for the work of the WPDR under its incoming Chairperson.

This revision only reflects drafting suggestions on a few issues which I feel have enjoyed wide support by delegations during our discussions. It does not address other issues on which differences persist. Although, in several instances, work on these has advanced significantly, I have refrained from suggesting any compromise language, as I do not wish to influence future consideration of these issues under the guidance of my successor. The absence of any drafting changes regarding those issues should not be construed to solidify the language as it stands.

Therefore, the content of my Note on outstanding issues (Room Document of 12 March 2008), as well as the 20 or so issues raised by delegations (Room Document of 25 June 2008), will require further negotiation and debate in the Working Party.

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**- DRAFT -**

**DISCIPLINES ON DOMESTIC REGULATION**

**I. INTRODUCTION**

1. Pursuant to Article VI:4 of the GATS, Members have agreed to the following disciplines on domestic regulation.
2. The purpose of these disciplines is to facilitate trade in services by ensuring that measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards are based on objective and transparent criteria, such as competence and the ability to supply the service, and do not constitute disguised restrictions on trade in services.
3. Members recognize the right to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right. These disciplines should not be construed to prescribe or impose particular regulatory approaches or any particular regulatory provisions in domestic regulation.
4. Members recognize the difficulties which may be faced by individual developing country Members in implementing disciplines on domestic regulation, particularly difficulties relating to level of development, size of the economy, and regulatory and institutional capacity. Members recognize 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.

**II. DEFINITIONS**

5. "Licensing requirements" are substantive requirements, other than qualification requirements, with which a natural or a juridical person is required to comply in order to obtain, amend or renew authorization to supply a service.
6. "Licensing procedures" are administrative or procedural rules that a natural or a juridical person, seeking authorization to supply a service, including the amendment or renewal of a licence, must adhere to in order to demonstrate compliance with licensing requirements.
7. "Qualification requirements" are substantive requirements relating to the competence of a natural person to supply a service, and which are required to be demonstrated for the purpose of obtaining authorization to supply a service.
8. "Qualification procedures" are administrative or procedural rules that a natural person must adhere to in order to demonstrate compliance with qualification requirements, for the purpose of obtaining authorization to supply a service.
9. "Technical standards" are measures that lay down the characteristics of a service or the manner in which it is supplied. Technical standards also include the procedures relating to the enforcement of such standards.

### III. GENERAL PROVISIONS

10. 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 measures to the extent that they constitute limitations subject to scheduling under Article XVI or XVII.

11. Measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards shall be pre-established, based on objective and transparent criteria and relevant to the supply of the services to which they apply.

12. Nothing in these disciplines prevents Members from exercising the right to introduce or maintain regulations in order to ensure provision of universal service, in a manner consistent with their obligations and commitments under the GATS.

### IV. TRANSPARENCY

13. Each Member shall publish promptly, through printed or electronic means, measures of general application relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards, as well as detailed information regarding these measures. This information shall include, *inter alia*:

- (a) whether any authorization, including application and/or renewal where applicable, is required for the supply of services;
- (b) the official titles, addresses and contact information of relevant competent authorities;
- (c) applicable licensing requirements and criteria, terms and conditions of licences, and licensing procedures and fees;
- (d) applicable qualification requirements, criteria and procedures for verification and assessment of qualifications including fees;
- (e) applicable technical standards;
- (f) procedures relating to appeals or reviews of applications;
- (g) monitoring, compliance or enforcement procedures including notification procedures for non-compliance;
- (h) where applicable, how public involvement in the licensing process, such as hearings and opportunity for comment, is provided for;
- (i) exceptions, derogations or changes to measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards; and
- (j) the normal timeframe for processing of an application.

Where publication is not practicable, such information shall be made otherwise publicly available.

14. Each Member shall maintain or establish appropriate mechanisms for responding to enquiries from any service suppliers regarding any measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards. Such enquiries may be addressed



through the enquiry and contact points established under Articles III and IV of the GATS or any other mechanisms as appropriate.

15. Each Member shall endeavour to ensure that any measures of general application it proposes to adopt in relation to matters falling within the scope of these disciplines are published in advance. Each Member should endeavour to provide reasonable opportunities for service suppliers to comment on such proposed measures. Each Member should also endeavour to address collectively in writing substantive issues raised in comments received from service suppliers with respect to the proposed measures.

## **V. LICENSING REQUIREMENTS**

16. Where residency requirements for licensing not subject to scheduling under Article XVII of the GATS exist, each Member shall consider whether less trade restrictive means could be employed to achieve the purposes for which these requirements were established.

## **VI. LICENSING PROCEDURES**

17. Each Member shall ensure that licensing procedures, including application procedures and, where applicable, renewal procedures, are as simple as possible and do not in themselves constitute a restriction on the supply of services.

18. Each Member shall ensure that the procedures used by, and the decisions of, the competent authority in the licensing process are impartial with respect to all applicants. The competent authority should be operationally independent of and not accountable to any supplier of the services for which the licence is required.

19. An applicant shall, in principle, not be required to approach more than one competent authority in connection with an application for a licence.

20. An applicant should be permitted to submit an application at any time, except where licenses are limited in numbers, including in public tendering. Where specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. Where possible, applications should be accepted in electronic format under the same conditions of authenticity as paper submissions.

21. The competent authority shall, within a reasonable period of time after receipt of an application which it considers incomplete, inform the applicant, to the extent feasible identify the additional information required to complete the application, and provide the opportunity to correct deficiencies.

22. Authenticated copies should be accepted, where possible, in place of original documents.

23. If an application for a licence is rejected by the competent authority, the applicant shall be informed in writing and without undue delay. In principle, the applicant shall, upon request, also be informed of the reasons for rejection of the application and of the timeframe for an appeal against the decision. An applicant should be permitted, within reasonable time limits, to resubmit an application.

24. Each Member shall ensure that the processing of an application for a license, including reaching a final decision, is completed within a reasonable timeframe from the submission of a complete application. Each Member shall endeavour to establish the normal timeframe for processing of an application.

25. Each Member shall ensure that a licence, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.

26. Each Member shall ensure that licensing fees<sup>3</sup> are reasonable in terms of the costs incurred by the competent authority, including those for activities related to regulation and supervision of the relevant service, and do not in themselves restrict the supply of the service.

## **VII. QUALIFICATION REQUIREMENTS**

27. Where a Member imposes qualification requirements for the supply of a service, it shall ensure that adequate procedures exist for the verification and assessment of qualifications held by service suppliers of other Members. In verifying and assessing qualifications, where the competent authority finds it relevant, it shall give due consideration to relevant professional experience of the applicant as a complement to educational qualifications. Where the competent authority considers that membership in a relevant professional association in the territory of another Member is indicative of the level of competence or extent of experience of the applicant, such membership shall also be given due consideration.

28. Provided an applicant has presented all necessary supporting evidence of qualifications, the competent authority, in verifying and assessing qualifications, shall identify any deficiency and inform the applicant of requirements to meet the deficiency. Such requirements may include, *inter alia*, course work, examinations, training, and work experience. Where appropriate, each Member shall allow applicants to fulfil such requirements in the home, host or any third jurisdiction.

29. Residency requirements, other than those subject to scheduling under Article XVII of the GATS, shall not be a pre-requisite for assessing and verifying the competence of a service supplier of another Member.

30. Once qualification requirements and any applicable licensing requirements have been fulfilled, each Member shall ensure that a service supplier is allowed to supply the service without undue delay.

## **VIII. QUALIFICATION PROCEDURES**

31. Each Member shall ensure that qualification procedures are as simple as possible and do not in themselves constitute a restriction on the supply of services.

32. An applicant shall, in principle, not be required to approach more than one competent authority for qualification procedures.

33. An applicant should be permitted to submit an application at any time. The competent authority shall initiate the processing of an application without undue delay.

34. Where examinations are required, each Member shall ensure that they are scheduled at reasonably frequent intervals. Applicants for examinations shall be allowed a reasonable period to submit applications.

35. The competent authority shall, within a reasonable period of time after receipt of an application, which it considers incomplete, inform the applicant, to the extent feasible, identify the

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<sup>3</sup> Licensing 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.

additional information required to complete the application, and provide the opportunity to correct deficiencies.

36. Authenticated copies should be accepted, where possible, in place of original documents.

37. If an application for verification and assessment of qualification is rejected by the competent authority, the applicant shall be informed in writing and without undue delay. In principle, the applicant shall, upon request, also be informed of the reasons for rejection of the application and of the timeframe for an appeal against the decision. An applicant should be permitted, within reasonable time limits, to resubmit an application.

38. Each Member shall ensure that the processing of an application, including verification and assessment of a qualification, is completed within a reasonable timeframe from the submission of a complete application. Each Member shall endeavour to establish the normal timeframe for processing of an application.

39. Each Member shall ensure that any fees relating to qualification procedures are commensurate with the costs incurred by the competent authorities and do not in themselves restrict the supply of the service.

## **IX. TECHNICAL STANDARDS**

40. Members are encouraged to ensure maximum transparency of relevant processes relating to the development and application of domestic and international standards by non-governmental bodies.

41. Where technical standards are required and relevant international standards exist or their completion is imminent, Members should take them or the relevant parts of them into account in formulating their technical standards, except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of national policy objectives.

## **X. DEVELOPMENT**

42. A developing country Member shall not be required to apply these disciplines for a period of [X] years from their date of entry into force. Before the end of this transitional time period, upon request by a developing country Member, the Council for Trade in Services may extend the time period to implement these disciplines, based on that Member's level of development, size of the economy, and regulatory and institutional capacity.

43. A Member may accord reduced administrative fees to service suppliers from developing country Members.

44. Where circumstances allow for the phased introduction of new licensing requirements and procedures, qualification requirements and procedures, and technical standards, Members shall consider longer phase-in periods for such measures in service sectors and modes of supply of export interest to developing country Members.

45. Developed country Members, and to the extent possible other Members, shall provide technical assistance to developing country Members and in particular least-developed country Members (LDCs), upon their request and on mutually agreed terms and conditions. Technical assistance shall be 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. Such assistance may also be provided directly to the respective service suppliers.

46. LDCs shall not be required to apply these disciplines. LDCs are nonetheless encouraged to apply these disciplines, to the extent compatible with their special economic situation and their development, trade and financial needs.

## **XI. INSTITUTIONAL PROVISIONS**

47. The Council for Trade in Services shall establish a Committee on Domestic Regulation to oversee the implementation of these disciplines and the operation of Article VI of the GATS including any further work under Article VI:4 of the GATS.

48. The Council for Trade in Services shall, upon request from any Member, review the operation of these disciplines and make recommendations as appropriate.

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