

Working Party on Professional Services

NOTE ON THE MEETING HELD ON 29 JULY 1998

Note by the Secretariat

1. The Working Party on Professional Services held its twenty-first meeting on 29 July 1998. The agenda for the meeting was contained in airgram WTO/AIR/892.

Work Pursuant to Paragraph 2(a) of the *Decision on Professional Services*

2. The Chairman opened the meeting by stating that he intended to discuss only the outstanding paragraphs of the draft disciplines on which no consensus had been obtained, i.e. paragraphs 11 and 20 of the Disciplines on Domestic Regulation in the Accountancy Sector (tenth revision, Job No. 3980). The Chairman noted that he had held informal consultations on these paragraphs in order to resolve the outstanding issues, and observed that the delegations concerned had made every effort to arrive at a consensus.

3. Regarding paragraph 11, the Chairman asked Mexico to explain its concerns. The representative of Mexico stated that he had asked for the floor to state a concern that Mexico had regarding a possible inconsistency, perhaps only theoretical, between what was stated in paragraph 11 of the Disciplines on Domestic Regulation in the Accountancy Sector on the one hand, and what had already been included in the schedule of commitments of Mexico for accounting, auditing and bookkeeping services on the other hand. This concern emanated from the fact that in paragraph 11 of the Disciplines it was stated that: "Members shall ensure that the use of firm names is not restricted, save in fulfilment of a legitimate objective", while in the column of limitations on national treatment in the schedule of commitments of Mexico it had clearly and explicitly been mentioned that: "Foreign accounting and auditing enterprises must use the name of the Mexican partners". Taking into account that the purpose of the Disciplines was to clarify the provisions of Article VI:4 of the General Agreement on Services, Mexico considered that these disciplines had no effect what so ever on the commitments or limitations on market access or national treatment included in the schedules of commitments of Members. However, for transparency purposes before the rest of the Members of the Working Party, the delegation of Mexico wished to know the opinion of the Chairman on this matter.

4. The Chairman replied that, from Mexico's intervention, he understood that the concern related to a limitation included in the national treatment column of the schedule of Mexico, and its relationship with paragraph 11 of the Disciplines on Domestic Regulation in the Accountancy Sector which the WPPS was in the process of adopting. He noted that the relationship between Articles VI and Articles XVI and XVII was important, and was dealt with in the Disciplines. The "Objectives" part of the disciplines (paragraph 1), after reminding what was the purpose of the Disciplines, Specifically stated that "The disciplines therefore do not address measures subject to scheduling under Articles XVI and XVII of the GATS, which restrict access to the domestic market or limit the application of national treatment to foreign suppliers". Also that "Such measures are addressed in the GATS through the negotiation and scheduling of specific commitments". The Chairman said that he thought the above explanation should reassure Mexico that the disciplines the WPPS was developing under Article VI of the GATS were not intended to overlap nor to overrule measures which are addressed in the GATS through the negotiation and scheduling of specific commitments on market access under Article XVI or on national treatment under Article XVII. The representatives of Canada,

the European Commission and the United States supported the Chairman's interpretation. Mexico stated that the comments were helpful, as Mexico now understood that the entry in its Schedule concerning national treatment for the accountancy would not be affected by paragraph 11 of the Article VI disciplines on accountancy.

5. On Paragraph 20, the Chairman asked if India had any points it wished to make. India responded by noting that, at the WPPS meeting of 1 April, 1998, it had suggested the inclusion of an additional paragraph in this section on qualification requirements, with the intention of providing an indicator to what could be the least trade restrictive measure that could be considered by Members in cases where the qualifications of a foreign candidate are regarded as not being equivalent. In subsequent meetings, based on the responses and comments of Members, India had presented various amended versions of this paragraph. Members, however, had continued to express reservations on the Indian proposal. In the WPPS meeting of 16 July, 1998, India in this context had expressed a reservation on the existing formulation of the section on qualification requirements, stating that it did not adequately reflect India's concerns on the possibility of Members adopting procedures which may be more trade restrictive than necessary, or which may create unnecessary barriers to trade in the accountancy sector. Since that meeting, India had a number of bilateral meetings with various delegations in an attempt to arrive at a formulation which would take care of India's concerns and satisfy the observations and suggestions made by other delegations.

6. India's concern, as previously stated, was basically that while fully qualified professionals could be put through any kind of pre-license examination that the host country might wish, they should not, at least in principle, be asked to go through the entire professional education requirement once again. Bases on the responses and discussions with other delegations, India had proposed an alternate formulation for a new paragraph to be added to section VI of the disciplines.¹ India felt that, by including the words "*inter alia*", "including" and "etc." in the first sentence of the formulation, it had adequately addressed the concerns expressed by Members that they did not want either a hierarchy to be established, as far as the various procedures were concerned, nor any restrictions imposed on their competent authorities on what procedures to adopt as a prerequisite to the issue of a license. Further, while India strongly felt that "in principle" full requalification should not be required, in view of the concerns expressed by Members, India expressed the willingness to accept the word "normally", which clearly indicated that competent authorities would have the freedom to ask for full requalification as and when so necessitated.

7. In spite of having diluted the original formulation to a large extent, India was unable to generate any move towards a consensus. The further revised formulation, thought acceptable to some Members did not achieve the necessary consensus. Regrettably, this left India with no option but to continue to maintain its reservation. However, India was open to any further suggestions or meetings on the matter, even though the Chairman proposed to suspend further discussions on the text. The Chairman responded by expressing disappointment that India was unable to participate in the consensus on the text of the disciplines. The Chairman then indicated that he considered the text of the disciplines on accountancy closed, and stated that he looked forward to India being able to soon lift its reservation.

8. The Chairman then proposed an informal meeting, in addition to the next formal meeting previously set for 22 October, on the morning of 2 October. The proposal was accepted.

9. Under "Other Business", the Chairman observed that he had produced two Notes. One Note was a follow-up of the earlier Secretariat Note on issues related to Articles XVI and XVII, and the

¹ The text of the revised Indian proposal was as follows: "Where foreign qualifications are regarded as not being equivalent, Members shall adopt such procedures, *inter alia* including a test of competency, period of apprenticeship, training etc., which do not create unnecessary barriers to trade in accountancy services, as referred to in paragraph 2. Normally, full professional re-qualification should not be required".

second was a written statement of the Chairman's proposal on the legal form of the disciplines, as requested by Members at the previous meeting. The Chairman invited Members to study the Notes over the summer, and to make comments at the next meetings.
