

Working Party on Professional Services

NOTE ON THE MEETING HELD ON 4 DECEMBER 1998

Note by the Secretariat

1. The Working Party on Professional Services held its twenty-fourth meeting on 4 December 1998. The agenda for the meeting was contained in airgram WTO/AIR/988. The main items on the agenda were the draft disciplines on accountancy, the draft Decision of the Council for Trade in Services on the legal form of the disciplines on accountancy, and draft reports of the WPPS to the Council for Trade in Services. Also discussed were ideas for the future work of the WPPS.

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

Draft Disciplines on Accountancy

2. Introducing the first item on the agenda, the draft *Disciplines on Domestic Regulation in the Accountancy Sector* (S/WPPS/W/21); the Chairman recalled that discussions on the disciplines had been substantially concluded at the meeting of 17 July, but there was one outstanding reservation from the delegation of India. Having reflected on the points made by the Indian delegation, he wished to observe that a number of paragraphs in the disciplines did specifically deal with the need for domestic regulation in the accountancy sector to be not more trade restrictive than necessary to fulfill a legitimate objective, and to not constitute unnecessary barriers to trade. It seemed that these provisions should be capable of taking account of the sorts of concerns that the Indian delegation had been voicing. The Chairman also noted that there was a "consensus minus one", and therefore asked, and urged, the Indian delegation to show maximum flexibility.

3. The representative of India stated that, as Members were aware, India had, in the WPPS meeting on 1 April 1998, suggested the inclusion of an additional paragraph in the section on qualification requirements with the intention of providing an indication as to what could be the least trade restrictive measure that should be considered by members in cases where the qualification of a foreign candidate was not regarded as being equivalent. In subsequent meetings, based on the responses and comments that Members had made, India had presented various options and amended versions of the paragraph. Members, however, had continued to express certain reservations on the proposal. In the meeting held on 16 July, India had in this context expressed its reservations 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 services trade in the accountancy sector.

4. India's basic concern, which had been highlighted in a number of meetings, was that while fully qualified professionals could, and perhaps should, be put through any kind of pre-license examination that the host country might so wish, they should not, at least in principle, be asked to go through the entire professional educational requirement all over again. India had thought, and continued to believe, that this was both a logical and a reasonable suggestion, which would have only strengthened the draft disciplines, particularly since, in subsequent proposals, India made an endeavour to address the concern expressed by Members on the issue of hierarchy and of not wanting to impose any sort of restriction on competent authorities regarding licensing procedures. India was

disappointed that, in spite of having significantly modified the original formulation, it was unable to convince other Members.

5. India continued to feel that the section did not adequately reflect the basic mandate given to the WPPS, i.e. to establish multilateral disciplines which would ensure that domestic regulatory measures did not constitute a barrier to trade. India still felt that there was a need to lay down a procedure, or at least a pointer towards such a procedure, that would help competent authorities in the territories of Members in issuing licenses in situations where the equivalency between the educational qualification of domestic and foreign applicants was perceived to be different. In India's view, this procedure needed to be least burdensome, and formulated in a manner so that it did not constitute a barrier to trade. India felt that this concern would have been best met by incorporating a provision for a qualification requirement based on a test of professional competence. Such a test of competency, with universal applicability, would have provided the required transparency to the process of granting of such licences in cases where foreign qualifications were regarded as not being equivalent.

6. India was at a stage when the proposed draft disciplines for the accountancy sector seemed to have the approval of all Members, except India, and its reservation on the qualification section of the disciplines was presumably the only outstanding reservation. Over the past week, India had been consciously deliberating on its future course of action. The delegate wished to record India's gratitude to the Chairman and others for the formal and informal advice provided. This advice had provided India with a light forward. With all sincerity India accepted the advice, and hoped that other Members would appreciate the flexibility shown. However, India wished to emphasise two points: first, India had taken the action to facilitate the conclusion of the work programme, and therefore it should not be construed as an implicit willingness to go along without an adequate redressal of its concern during the development of disciplines on other professional services in the future. In addition, India hoped that Members would take into account the substantive suggestions that it had made while formulating or implementing their domestic regulations, and ensure that these were not more trade restrictive than necessary to fulfil a legitimate objective, and that the said procedures did not constitute a barrier to trade in any way. With these comments, India thereby joined the consensus.

7. The Chairman responded by thanking the Indian delegation for the helpful statement. The Chairman proposed that the WPPS formally adopt the accountancy disciplines.

8. The WPPS adopted the disciplines on accountancy.

Draft Council Decision

9. The Chairman then proceeded to the draft Council *Decision On Disciplines Relating to the Accountancy Sector* (Job. No. 6481) noting that, at the previous WPPS meeting of 16 November, there had been a large measure of agreement on the draft Decision. Only two small text changes had been introduced, for the purpose of clarity.

10. The representative of Venezuela noted that, at the previous meeting of the Council for Trade in Services, New Zealand had proposed a broader work programme, under the GATS Article VI:4 mandate, covering all services sectors. Venezuela had expressed concern that the new proposal would overlap with work underway in the WPPS, and involve extensive additional work for all delegations; in this regard, the delegate stated, the requirements of the Singapore Declaration should be obeyed. In the understanding of the Venezuelan delegation, the second paragraph of the draft Decision already aimed at accomplishing the work mandated. As the New Zealand proposal was connected with the work of the WPPS, and had not yet been analyzed in depth, Venezuela consequently found it impossible to join the consensus on the draft Council Decision until the magnitude of the new work programme became known.

11. The representative of the European Communities was also concerned for the next year, but said this was a separate issue from the draft Decision. Article VI:4 was clear on the setting up of appropriate bodies, and so far the only body that had been established was the WPPS. The draft Decision would have no impact on future discussion of Article VI:4 work. The delegates of Canada, Australia, Japan, Chile and Mexico then made statements expressing similar views concerning the workload issue, and agreed that the adoption of the draft Decision would not prejudice work in the Council.

12. The Chairman noted that many delegations had stated that the work of the WPPS and the Council in regard to Article VI:4 issues should be properly coordinated and managed.

13. The representative of New Zealand said that she had thought that Venezuela's earlier questions in the Council were concerned with organizational issues. What New Zealand had proposed was consistent with the Singapore Mandate, and a discussion on how to organize both elements of the work could best take place under the agenda item on future work and in future consideration by the Council. The delegates from Canada, Brazil, Argentina, Uruguay, Hungary, Chile and Switzerland stated that the draft Decision would not prejudice work in the Council. They all supported the adoption of the draft Decision by the WPPS.

14. The Chairman noted that Members had expressed a strong view toward adoption of the disciplines, but they had also expressed great sympathy with the concerns raised by Venezuela. Therefore, Members need to ensure that the work of the WPPS and any work that might be agreed in the Council must be properly coordinated and managed. Noting that the draft Council Decision did not prejudice the Council's work on Article VI:4, the Chairman asked if Venezuela was now willing to join the consensus.

15. The representative of Venezuela said she appreciated the comments made by the Chairman and Members, but that she did not have much flexibility in her instructions. Therefore, it was necessary to specifically indicate that discussions to be held in the WPPS and the Council be coordinated in such a fashion as to not be a burden on delegations. Such a statement would need to be more than an opinion expressed by the Venezuela delegation.

16. The Chairman suggested a phrase be added to the end of the first sentence of the second paragraph of the draft Decision, i.e. "taking into account any decisions which may be taken in the Council regarding work on Article VI:4". This was acceptable to Members. The Chairman then proposed that the WPPS adopt the Decision on an *ad referendum* basis, with a deadline for any comments by Members of 10 December 1998.

17. The delegate from the United States made a statement (to be added to this part of the minutes), noting that during the course of developing rules and principles for regulation of the accountancy profession, the United States had agreed to accept less comprehensive disciplines than it had originally sought. This was undertaken in the usual spirit of compromise necessary to achieve an agreement to a common text among all the participants, and with the understanding that delegations were prepared to make such a common text legally binding in the most expeditious modality available under the GATS, which would have been the inscription of such a common text in schedules of participating Members. The outcome, however, was quite a different one. The only thing that was certain, under the draft Council Decision, was that it would be some years before accountancy disciplines took on appropriate legal form, and only with respect to those Members who undertook specific commitments in accountancy. Under these conditions, it must be made clear that the disciplines for regulation of accountancy recommended for adoption by the Council on Trade in Services were not immutable. Members had the right to revisit the text in the future, during the course of developing disciplines for other professions, individually or collectively, or in the context of future negotiations, and the common text could be amended before it was finally made legally binding.

18. The representative of Japan said that, although not fully comfortable with the language "including accountancy", Japan was in a position to join in the consensus to support the draft Council Decision. Japan had contributed by exercising flexibility. With regard to the possibility of future revision, Japan wished to confirm that the revision of the adopted text of the disciplines for accountancy was possible only when the consensus is achieved. The representative also stressed that rational reasons for making the revision necessary would need to be shown for building the consensus.

19. The delegate from Australia stated that Australia wished to have recorded in the minutes its disappointment with the level of ambition evident in the current text of the accountancy disciplines. In Australia's view, the text was an inadequate reflection of the objective set by the WPPS and of the work accomplished. While Australia acknowledged that there were advances contained in the disciplines, particularly in the section on transparency, it remained particularly disappointed at the low level of ambition reflected in the sections on licensing and technical standards. Such limited outcomes did not seem to fit with the commitment made by Members in signing on to the GATS and Article VI:4, namely to develop disciplines to remove unnecessary barriers to trade in accountancy services. Australia looked forward to the development of stronger disciplines in this and other professional services sectors during the next round of services negotiations, and to giving those commitments full legal form.

20. The WPPS adopted the draft Decision on an *ad referendum* basis.

Draft Report on the Accountancy Disciplines

21. The Chairman introduced the draft *Report of the Working Party on Professional Services to the Council for Trade in Services on the Development of Disciplines on Domestic Regulation in the Accountancy Sector* (S/WPPS/W/22).

22. The delegate of the European Communities suggested that last line of paragraph six be revised to say "which the WPPS now recommends for adoption", and that the original document reference numbers be retained for the attachments.

23. The Chairman proposed that the WPPS adopt the draft report on the development of the accountancy disciplines, with the changes as noted.

24. The WPPS adopted the draft report on the accountancy disciplines.

Draft WPPS Annual Report to the CTS

25. The Chairman introduced the draft *Annual Report of the Working Party on Professional Services to the Council for Trade in Services* (S/WPPS/W/20).

26. Amendments to the text were suggested by the representatives of New Zealand, the European Communities, Japan, Mexico, Venezuela, Argentina, Brazil, Columbia, Australia and Uruguay.

27. The Chairman concluded by stating the agreed changes to the text. The Chairman then proposed that the WPPS adopt the draft annual report.

28. The WPPS adopted the draft annual report.

Discussion of Future Work

29. The Chairman opened the floor for comments. At the request of Venezuela, the discussion was held in formal mode.

30. The representative of New Zealand made three suggestions in regard to general disciplines: having the WPPS discuss and clarify the "cluster" of professions delegations had in mind when discussing general disciplines, noting that the Services Sectoral Classification List (WTO document MTN.GNS/W/120) seemed to divide logically into two clusters, i.e. professional services sub-sectors a.-g., and sub-sectors h.-j; extracting and analyzing the concepts underlying the accountancy disciplines; and examining aspects which had received little discussion to date, such as standards, together with examining aspects which were especially pertinent, such as qualification requirements and procedures.

31. The representative of Australia made a somewhat similar proposal, stating that the WPPS should develop generic disciplines covering a group of professions. The work should be focused on areas with substantial trade interests, such as architecture, engineering, surveying and law. She also stated there was a growing overlap between the activities of lawyers and accountants. The representative also said there was no need for further questionnaires. The delegate of Canada noted that his country was in the process of consulting with several professional services sectors. He suggested that the WPPS should start first with the MRA guidelines, examining their general applicability to other sectors. Members needed also to reflect about what should realistically be accomplished in regard to Article VI:4 work. The representative said there should not be exhaustive questionnaires, as there was already information available from the OECD and other organizations. Instead, Members could make submissions regarding the unique or different features of their regimes.

32. The representative of Japan expressed the concern that, at this stage, the concrete steps expressed by some Members might not represent realistic goals. Japan was also in the process of having a dialogue with professional services industry groups. Therefore, it might be somewhat premature to make a decision for priority areas of work. The delegate proposed a preliminary survey concerning the applicability of the accountancy disciplines to all the professional services sub-sectors, as defined in W/120. Japan believed such a survey should include simple questionnaires for Members, as well as the utilisation of relevant documents from other international fora such as OECD and APEC. The scope of this survey process could include the MRA guidelines as well as the disciplines.

33. The representative of Hong Kong, China supported the idea of developing generic disciplines, supplemented by the use of specific disciplines where appropriate. She also supported the use of simple questionnaires. The delegate from the European Communities said it would be useful to see if clusters of sectors had similar approaches. The work of other fora would be useful in this respect. On the questionnaire issue, the WPPS could send the accountancy disciplines and MRA guidelines to other professions for their comments.

34. The delegate of Venezuela said she had thought the discussion would be a very preliminary one, e.g. starting by analyzing what had been achieved. She enquired as to when the accountancy disciplines would be derestricted. In regard to sectors, she stated that Members could deal with licensing and technical standards on a horizontal basis. The representative of Uruguay also said the WPPS should be realistic regarding future work, and that time was needed for consultation, reflection and analysis.

35. The representative of Switzerland said that a horizontal approach would be more appropriate, and that three issues should be addressed, i.e. what parts of the disciplines could be made horizontally applicable, what other areas should be addressed, and whether the MRA guidelines could be made more widely applicable. The delegate of Mexico said the work should be realistic, and based on the accountancy disciplines. Priorities could not yet be established. She agreed that a survey could be made of the applicability of the disciplines to other professional services sectors.

36. The representative of Argentina said that he supported horizontal work in regard to the development of disciplines for professional services, including a questionnaire using concepts from the work on accountancy. The delegate from Brazil said that, first, an analysis should be made of the horizontal applicability of the accountancy disciplines to other professional sectors. The representative of New Zealand stated that it was necessary to have concrete proposals in order to be realistic.

37. The representative of Australia stated that the next year would be a time for gathering information on other professional services. She said that the accountancy disciplines, rather than a survey, should form the starting-point. Members should send the disciplines to other professions, and collect their responses. To be realistic, the focus should be on a limited number of sub-sectors.

38. In response to the question concerning document derestriction, the Secretariat noted that the WPPS documents would remain restricted until their adoption by the Council, after which they would be automatically derestricted.

39. The Chairman summed up discussions by noting that Members had agreed on the need to be realistic, and had put forward various suggestions. The WPPS would revert to the issue at the next meeting.

(b) Other Business

40. Under "Other Business", the Chairman noted that the next WPPS meeting was scheduled for 9 February.
