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## Working Party on Domestic Regulation

### REPORT BY THE CHAIRPERSON OF THE WORKING PARTY ON DOMESTIC REGULATION TO THE COUNCIL FOR TRADE IN SERVICES (SPECIAL SESSION)

This report describes the state of play of the Working Party's discussions in fulfilment of the mandate to develop any necessary disciplines to ensure that measures relating to licensing requirements and procedures, technical standards and qualification requirements and procedures do not constitute unnecessary barriers to trade in services, in accordance with GATS Article VI:4. The report is made under my responsibility as the Chairperson of the Working Party on Domestic Regulation.

#### 1 STATE OF PLAY WITH REGARD TO THE SUBSTANTIVE DISCUSSIONS

1.1. Since the last Ministerial Conference, discussions in the Working Party have resumed on the basis of proposals submitted by several Members. An overview of communications submitted to the Working Party can be found in the Annual Reports for 2016 (S/WPDR/19) and 2017 (S/WPDR/20).

1.2. At the most recent formal meeting of the Working Party, on 7 and 8 November 2017, a revised text proposal by co-sponsors for disciplines on domestic regulation was discussed<sup>1</sup>, along with text submissions by the Russian Federation<sup>2</sup> and India<sup>3</sup>.

1.3. The proposal by co-sponsors contains seven sections: Section 1 - General Provisions; Section 2 - Administration of Measures; Section 3 - Independence; Section 4 - Transparency; Section 5 - Technical Standards; Section 6 - Development of Measures; and Section 7 - Development. Section 6 on Development of Measures contains two paragraphs that are supported by a sub-set of co-sponsors, namely a proposal on Gender Equality and a proposal for a Necessity Test.

1.4. The Communication by India was submitted with reference to an earlier proposal by co-sponsors (JOB/SERV/268), and contains comments and textual suggestions on all sections of the co-sponsors' proposal. The Communication by the Russian Federation proposes several amendments and modifications to the most recent proposal by co-sponsors (JOB/SERV/272). The specific amendments and modifications relate to the sections on administration of measures, transparency, development of measures, and development.

1.5. Co-sponsors consider their proposal to be realistic and balanced. For these delegations, transparent and predictable rules on licensing and qualification requirements and procedures, and technical standards are important to help service suppliers realize existing market access commitments. They believe that the proposed disciplines, together with flexibilities embedded in many of the provisions, would allow implementation by Members at different levels of development and regulatory capacity, and following diverse regulatory approaches. Further flexibility would be

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<sup>1</sup> JOB/SERV/272/Rev.1, dated 7 November 2017; Communication from Argentina; Australia; Canada; Chile; Colombia; Costa Rica; the European Union; Hong Kong, China; Iceland; Israel; Japan; Kazakhstan; the Republic of Korea; Liechtenstein; Mexico; the Republic of Moldova; New Zealand; Norway; Switzerland; Chinese Taipei, Turkey; Ukraine and Uruguay – Disciplines on Domestic Regulation.

<sup>2</sup> JOB/SERV/273, dated 3 November 2017; Communication from the Russian Federation – Proposed amendments and modifications to communication JOB/SERV/272.

<sup>3</sup> RD/SERV/145, dated 29 September 2017; Communication from India – India's comments on Communication JOB/SERV/268 – Disciplines on Domestic Regulation.

provided in their view through a proposed development chapter which allows for transition periods for specified provisions for developing country Members. Least-developed country Members would not be required to apply the disciplines, and would be able to avail themselves of transition periods upon their graduation from LDC status.

1.6. Many delegations engaged on the proposal by co-sponsors. Some delegations expressed varying degrees of general support, pointing to a limited number of drafting and technical issues that they wished to see addressed.

1.7. Some delegations raised issues on a wider range of the proposed disciplines. Certain provisions were regarded as being too ambitious, while other provisions were considered as not being sufficiently ambitious. Views on the need of including certain provisions in the disciplines differed among delegations. A range of specific issues were identified by individual delegations. These issues include: the structure and building blocks of the text; the relationship between individual provisions and existing obligations in Article VI; language concerning the right to regulate; the scope of application; the link of the disciplines to varying levels of market access commitments across the membership; the absence of definitions; the meaning and scope of the term authorization; the drafting of flexibility language in specific provisions; the absence of specific provisions relating to qualification requirements and procedures; the scope of, and need for a section on independence; the mechanisms for replying to enquiries by services suppliers; the obligation to provide information on draft laws and regulation of general application and the opportunity to comment; the role of international standards as benchmarks; the relationship of the section on development of measures with Article VI:4; the meaning and scope of the proposed discipline to base measures on objective and transparent criteria; the need for inclusion of disciplines on gender equality and necessity; and concerns on various provisions of the development section. Some delegations pointed out that a better understanding of some of the proposed sections of the text, and the terminology used therein, was required.<sup>4</sup>

1.8. Some Members pointed to fundamental conceptual differences with co-sponsors, and questioned the need for the proposed disciplines and the benefits they would bring to developing countries and LDCs. In their view, the proposed disciplines would benefit services exporting countries, but not importing countries; most developing countries and LDCs, however, were net services importers. These delegations also believe that some of the proposed provisions fall outside of the mandate of GATS Article VI:4. They are of the view that the proposed disciplines would impose a model of regulation that would be incompatible with their development aspirations and would unduly limit their policy space.

## **2 STATE OF PLAY WITH REGARD TO THE WAY FORWARD**

2.1. Following the substantive discussion during the meeting of 7-8 November 2017, I had requested delegations to indicate what work they wished to carry out in the WPDR before the last General Council on 30 November.

2.2. Co-sponsors and some other Members expressed their wish to continue work on domestic regulation disciplines with a view of achieving an outcome at MC11. Many of these Members called for a negotiating text to be produced by the Chair to provide an input to the discussion. Some Members calling for a negotiating text expressed the view that the discussion should take place at a higher level to address higher level political questions.

2.3. Other Members did not see a prospect for an outcome in the short term. Some of these Members referred to the limited time that was available to bridge differences, while others were of the view that work on basis of the proposal by co-sponsors could not lead to an outcome. Consequently these Members did not believe that the production of a negotiating text by the Chair would be useful. Some of these delegations suggested continuing discussions on domestic regulation after MC11.

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<sup>4</sup> In addition to questions and answers provided by many delegations in the context of the formal meetings, the African Group provided "Questions on Domestic Regulation", set out in document JOB/SERV/269, dated 27 September 2017. Co-sponsors of disciplines on Domestic Regulation circulated a communication entitled "Responses to Questions on Domestic Regulation" in document JOB/SERV/270, dated 12 October 2017.

2.4. In light of the disagreement on how to proceed in the coming weeks I did not see scope to prepare a negotiating text under my own responsibility. I emphasized that I would remain available for consultations with any delegation wishing to pursue the discussions in the coming weeks. It is my understanding that co-sponsors are continuing to reach out to other delegations with a view to increasing support for their proposal.

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