

COMMUNICATION FROM SWITZERLAND

Initial Elements for Modalities for Negotiations on Disciplines on Domestic Regulation

I. INTRODUCTION

1 . During the last months, Switzerland got the impression that there seems to be some willingness among the Members to the WPDR to have a snap shot of what has been achieved so far and what is still ahead in these negotiations on disciplines on domestic regulations. In addition, Members were invited by the TNC to prepare a first approximation for July 2005 with a view to draft the modalities to be ready by the 6h Ministerial Meeting in Hong Kong.

2. The objective of this communication is to actively contribute to fulfilling this objective. Switzerland wishes to invite the VYTDR to consider the elements for modalities on disciplines on domestic regulations herein, in order to provide inputs and focus further negotiations. The elements have been arranged in a way to reflect a possible structure for a comprehensive text of disciplines on domestic regulations, which Members to the VVIPDR may wish to consider.

3 . The notions reflected are preliminary in nature and being made without prejudice to Switzerland's final position on the various elements herein discussed, and does not preclude the possibility of other elements being included, deleted or revised in the future in the context of the forthcoming discussions.

11. MODALITIES FOR DRAFT DISCIPLINES ON DOMESTIC REGULATION

A. BACKGROUND

4. With a view to focus the forthcoming work of the WPDR, the following elements are providing useful guidance for the negotiations:

multilateral disciplines on domestic regulations relating to licensing and qualification requirements and procedures. and technical standards are established with a view to further facilitate trade in services;

the provisions of the General Agreement on Trade in Services and of any disciplines on domestic regulation shall respect a Member's right to regulate and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives. The exercise of such a right by a Member in accordance with the provisions of the GATS and the disciplines shall not be constrained in any manner;

several issues to be addressed by the disciplines are very similar in nature, while at the same time recognizing the high diversity of services sectors;

disciplines are mandated under Part 11 General Obligations and Disciplines of the GATS;

nothing in the disciplines shall prevent a Member from availing of the rights granted it under Arts. XII, XIV and XIVbis of the GATS;

they apply to all modes of supply, including measures regulating commercial presence and the presence of natural persons of a Member in the territory in the territory of any other Member are affecting the entry of natural persons who are service suppliers of a Member, and natural persons of a Member who are employed by a service supplier of a Member, in respect of the supply of a service;

market access and national treatment obligations arising from a Member's specific commitments are subject to the limitations and conditions set out in individual Members' schedules, measures relating to licensing requirements and procedures, qualification requirements and procedures and technical standards, which administer such limitations and conditions, are the subject of disciplines on domestic regulation in respect of their regulatory aspects; and finally

some developing country Members may face difficulties in complying immediately with the obligations stipulated in these disciplines. Account shall be taken of the degree of development of services regulations and of institutional capacities in different countries and the particular need of developing countries to regulate and to introduce new regulations.

B. OBJECTIVE

5. Members agree that the purpose of the disciplines is to facilitate trade in services by ensuring that measures relating to licensing requirements and procedures, qualifications requirements and procedures as well as technical standards do not constitute unnecessary barriers to trade in services, and that such requirements are, *inter alia*, based on objective and transparent criteria, such as competence and the ability to supply the service, in a manner not more burdensome than necessary to ensure the quality of the service, and in the case of licensing procedures, not in themselves a restriction on the supply of the service.

C. SCOPE AND DEFINITION OF TERMS

6. Members recognise that there is a broad convergence of views that with respect to these initial modalities, disciplines under negotiations on domestic regulations relating to licensing requirements and procedures, qualification requirements and procedures and technical standards shall apply horizontally to all services sectors. Members also acknowledge the high diversity of services sectors and therefore agree that the disciplines under negotiations do not prejudice further development of any necessary disciplines for any specific sector.

7. Members note that Members have taken diverging positions on whether the disciplines, or elements thereof, should apply to all services sectors regardless whether they have been committed or not, or whether the disciplines on domestic regulation should be construed to apply only to sectors where specific commitments are undertaken. Members instruct the Working Party to continue its work on this issue, in order to reach agreement.

8. Negotiations shall aim to further deepening the understanding as to how regulatory disciplines apply to different levels of government and non-governmental bodies. Members note that document [room document on applying disciplines at different levels of government ...] may contain useful elements to nourish the discussions.

9. For purposes of the future disciplines, the following terms should be clearly understood and subject to precise definitions. As a first approximation the following definitions are proposed, subject to further refinement during the negotiations:

- (a) Licensing requirements means the substantive requirements, other than qualification requirements, which a service supplier is required to comply with in order to obtain a license or a formal permission to supply a service.
- (b) Licensing procedures means the administrative procedures relating to submission and processing of an application for a license.
- (c) Qualification requirements means the substantive requirements that a service supplier is required to **fulfill** in order to obtain authorization to supply a service.
- (d) Qualification procedures means administrative or procedural rules relating to the administration of qualification requirements.
- (e) Technical standards means all [voluntary] and [mandatory] requirements which may apply both to the characteristics or the definition of the service itself and to the manner in which it is performed.

D. PREPARATION, ADOPTION AND APPLICATION OF MEASURES

10. Members agree to ensure that measures of general application relating to licensing requirements and procedures, qualification requirements and procedures as well as technical standards are not more trade-restrictive than necessary to fulfil a national policy objective, taking account of the risks non-fulfilment would create. Bearing in mind that nothing shall prevent a Member from availing of the rights granted under XW, XIVbis, such national policy objectives *are, inter alia*: the access to essential services; the quality of the service; professional competence; or the integrity of the profession. Requirements shall be based on objective and transparent criteria.

11. Each Member shall examine, in sectors where specific commitments are undertaken, the possibility of modifying or terminating existing measures of general application relating to licensing requirements and procedures, qualification requirements and procedures as well as technical standards, if the circumstances or objectives giving rise to their adoption no longer exist or if new circumstances or objectives can be addressed in a less trade-restrictive manner.

E. TRANSPARENCY

12. Members agree to further consider the following elements regarding transparency in drafting the disciplines:

to make publicly available, on a regular basis, all measures covered by the disciplines through printed or electronic media;

to make publicly available, including through the enquiry and contact points established under Articles 111 and IV of the GATS, the names and addresses of competent authorities responsible for the measures covered by these disciplines;

to provide, upon request, all relevant information on measures covered by the disciplines. Such information includes terms of validity and conditions for a license or a qualification, a list of documents required in licensing procedures or qualification procedures and, where applicable, examination criteria;

when introducing, or changing any measures of general application that significantly affect trade in services, each Member shall endeavour to allow, except in emergency situations, a reasonable period between their publication and entry into force;

13. Members recognize that other elements of interest for the discussions on transparency may exist, namely those contained in [the matrix document ABC] [documents S/L/64, room document by the US of 18 February 05, Job(O3)/45/Rev.1, S/WPDR/W/25, and S/WPDR/W/32]. Key words are *inter alia*: opportunity to comment; regulatory impact assessments; and the use of plain language.

F. LICENSING REQUIREMENTS

14. In addition to the general principles set forth above, the disciplines will contain provisions regulating licensing requirements. Members acknowledge their intention to use the specifically related ideas set out in [the matrix document ABC] [document S/L/64] in order to focus the discussions. Nothing shall prevent Members from bringing in new elements for consideration.

G. LICENSING PROCEDURES

15. In addition to the general principles set forth above, the disciplines will contain provisions regulating licensing procedures. Members acknowledge their intention to use the specifically related ideas set out in documents [S/L/64, S/WPDR/W/25, and room document of 18 February by a group of developing countries] in order to focus the discussions. Nothing shall prevent Members from bringing in new elements for consideration.

16. Members note that divergences remain on the following issues:

H. QUALIFICATION REQUIREMENTS

17. In addition to the general principles set forth above, the disciplines will contain provisions regulating qualification requirements. Members acknowledge their intention to use the specifically related ideas set out in [the matrix document ABC] [documents S/L/64, Job(O5)/50, and room document of 18 February by a group of developing countries] in order to focus the discussions. Nothing shall prevent Members from bringing in new elements for consideration.

18. Members note that divergences remain on the following issues:

1. QUALIFICATION PROCEDURES

19. In addition to the general principles set forth above, the disciplines will contain provisions regulating qualification procedures. Members acknowledge their intention to use the ideas set out in [the matrix document ABC] [documents S/L/64, Job(O5)/50, and room document of 18 February by a group of developing countries] in order to focus the discussions. Nothing shall prevent Members from bringing in new elements for consideration.

20. Members note that divergences remain on the following issues:

J. TECHNICAL STANDARDS

21. In addition to the general principles set forth above, the disciplines will contain provisions regulating technical standards. Members acknowledge their intention to use the specifically related ideas set out in [the matrix document ABC] [documents S/L/64, and S/VvTDR/W/32] in order to focus the discussions. Nothing shall prevent Members from bringing in new elements for consideration.

22. Members note that divergences remain on the following issues: [the terms set out for equivalency, ...].

K. SPECIAL AND DIFFERENTIAL TREATMENT

23. Members recognize that special and differential treatment is an integral part of the disciplines on domestic regulations under negotiation.

24. Members take note of the ideas set out in [the matrix document ABC] [documents S/WPDR/W/32, para. 28 to 31 and room document of 18 February 05 by a group of developing countries, para 18 to 191 and agree to continue discussions on this item.

L. TECHNICAL ASSISTANCE

25. Members note that proposals have been made to integrate elements for technical assistance into the text of the disciplines. These proposals had received a positive initial response by developing countries.

26. Members take note of the ideas set out in [the matrix document ABC] [documents S/WPDR/W/32, para. 32 to 35 and room document of 18 February 05 by a group of developing countries, para 20] and agree to continue discussions on this item.