

Working Party on Domestic Regulation**COMMUNICATION FROM CHILE, INDIA, MEXICO,
PAKISTAN AND THAILAND**Proposed elements for disciplines on Qualification Requirements and Procedures**I. INTRODUCTION**

1. The General Agreement on Trade in Services (GATS) recognizes the right of members to regulate, and to introduce new regulations on the supply of services within their territories in order to meet national policy objectives. Such legitimate objectives could include quality of service, safety of consumers, code of conduct etc. However, members have to ensure that in sectors where specific commitments are undertaken, all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner. In other words, a balance is struck between the market access provided to service suppliers and the domestic regulations affecting the supply of that service/service supplier.

2. Further, Article VI: 4 of GATS states: "with a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, *inter alia*:

- (i) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (ii) not more burdensome than necessary to ensure the quality of the service;
- (iii) in the case of licensing procedure, not in themselves a restriction on the supply of the services."

3. One of the critical areas for such disciplines in Article VI:4 relates to **Qualification requirements and procedures**. This has a significant bearing on the recognition of qualifications especially for Professional Services. Lack of recognition is often one of the major barriers to movement of natural persons. Hence, we believe that disciplines in this area will benefit service suppliers of all members in gaining more effective market access. The issue of whether such disciplines when developed could apply horizontally or could be applicable only for a sub-set of sectors such as Professional Services could be discussed at an appropriate stage and would depend, in part, on the nature of elements contained in any possible disciplines.

4. The importance of this area has been repeatedly pointed out by members in earlier proposals and also discussed both in the WPDR and other appropriate forum¹. This proposal is an initial attempt to delineate certain critical elements relevant to disciplines on Qualification requirements and procedures. The proponents reserve the right to come back on any of these elements and/or any other elements that may be found appropriate.

¹ JOB(03)/192 on Recognition Issues submitted by India on 30 September 2003.
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5. Another relevant issue that may be considered by members is the distinction between measures that are to be addressed under Article VI:4 disciplines or those which fall within the scope of Articles XVI and XVII of the GATS. In this connection, it may be useful to recall this debate while the Accountancy Disciplines were adopted by the Services Council in 1998.²

II. PROBLEMS ARISING ON QUALIFICATION REQUIREMENTS AND PROCEDURES

6. A number of real problems affecting market access are encountered with respect to qualification requirements and procedures:

A. EQUIVALENCE AND RECOGNITION OF QUALIFICATIONS

7. Market access can be rendered meaningless if relevant qualifications held by foreign service suppliers are not recognized for the purpose of provision of services, specifically if members do not afford proper and fair recognition to foreign qualifications. Often such requirements are also location or institution specific to the host country. In the absence of any mechanism to establish the equivalence of foreign qualifications, education, training, and experience to these requirements, market access could be impaired/nullified.

B. DIFFERENT LEVELS OF GOVERNMENTS

8. Very often there are multiple and varying sets of such requirements and procedures at different levels of government (Federal, State, Municipal etc.) which could be unduly burdensome and expensive for the potential service supplier. Meeting requirements in one jurisdiction does not in any way guarantee that the service supplier is entitled to practice in other jurisdictions within the territory of the Member.

C. EXAMINATION REQUIREMENTS

9. Examinations are a legitimate condition for testing the qualifications. However, various preconditions may exist for sitting for such examinations including host country language, residency and experience in host country which can be overly burdensome. Further, scope and frequency of such examinations can be of concern, e.g., requiring examinations on subjects unrelated to the service to be provided, infrequent examinations, unexpected changes to the examination requirements or coverage and conduct of such examinations only in host country.

D. EDUCATION, TRAINING AND EXPERIENCE REQUIREMENTS

10. Additional Education, training and experience requirements are often required on top of minimum qualification requirements. These could be objectively required in some cases for verifying the competence of foreign service providers. However, these requirements could become unduly complex and burdensome including by being tied only to host country systems and institutions, thus impairing a service supplier's capacity to meet them.

E. LACK OF INTERNATIONAL STANDARDS

11. In most services, there are no internationally accepted benchmarks of qualifications required to practice a particular profession. Even where such standards exist, some members may insist on much higher qualification standards without adequate justification thereof. In cases where such standards are lacking, there may be wide divergences in qualification requirements for the same profession across different members. All this leads to a lot of uncertainty for the professional service supplier.

² Document S/L/64, 17 December 1998.

12. These are some concrete examples illustrative of the kind of limitations to actual market access that may be created by qualification requirements and procedures. As is also evident from the nature of these problems, they do have a bearing on domestic recognition of qualifications as well even though there could be differential sets of qualification requirements for domestic and foreign service suppliers.

III. ISSUES RELATING TO QUALIFICATION REQUIREMENTS AND PROCEDURES FOR DISCIPLINES UNDER ARTICLE VI:4

13. The WPDR has been working on identifying various elements for possible disciplines on the areas mentioned specifically in Article VI:4. Based on some of the problems mentioned above as well as the examples of measures to be addressed by disciplines under GATS Article VI:4 contained in the Examples Paper compiled by the Secretariat, the following issues would need to be addressed for effective disciplines on qualification requirements and procedures:

A. QUALIFICATION REQUIREMENTS

- (i) Transparency provisions relating to the establishment and public availability of qualification requirements for various professional services.
- (ii) Availability of mechanisms for taking account of foreign qualifications. Equivalent criteria/standards as applied to domestic recognition of qualifications may prima facie be applied to recognition of foreign qualifications. This does not imply harmonization of requirements/standards but that unduly burdensome requirements should not be applied to verify foreign qualifications which could result in impaired market access.
- (iii) Mechanism for verification of educational qualifications of foreign service providers. This would involve the following :
 - Laying down the educational qualifications for practice of the profession.
 - Assessment of such qualifications and if educational attainments are found to be deficient, identification of additional education requirements one has to acquire to meet the qualification requirement.
 - The possibility of fulfilling such additional educational requirements should prima facie not be restricted to host country institutions. The possibility of meeting them in the home country should also be provided for unless there are justifiable reasons to the contrary which should be clearly stated.
 - Where educational systems are found to be practically comparable, either the foreign qualifications could be recognized or a procedure should be established, for example, through an examination to verify whether the educational qualifications prescribed have been met. Where deficiency has been established, on remedying such deficiency, the foreign qualification could be recognized or the procedure for verification should apply.
- (iv) Examination requirements should be linked to subjects relevant to the profession for which authorization to practice is being sought. Residency in host country or experience in specific locations in host country should not be made a pre-requisite for eligibility for such examinations unless found necessary for meeting legitimate public objectives.

- (v) Language fluency requirements when part of examination requirements should be based on meeting legitimate objectives such as the safety of the consumer, ensuring quality of the services or where working knowledge of the language is essential for practice. Language should not be used as a barrier in itself to prevent foreign service suppliers from sitting in such exams.
- (vi) Mechanism for verification of professional competence must be established containing the following features:
 - Work experience.
 - Holding a common professional exam to test educational qualifications, work experience, training.
 - Assessment of deficiency with respect to work experience, training etc and of additional requirements to overcome them.
 - Professional work experience should be given due consideration for making up any deficiency in educational requirements.
 - Membership of professional associations/institutions in the home country to check the bona fides of the service supplier and his registration in home country.
- (vii) Subsequent to the verification of educational qualifications and professional competence, there should be an established mechanism for registration and/or licensing to practice the said profession whenever required by home country laws/regulations.

B. QUALIFICATION PROCEDURES

- (i) Transparency provisions requiring provision of information on qualification procedures, i.e., administrative or procedural rules relating to administration of qualification requirements.
- (ii) Conducting required examinations at reasonably frequent intervals and open for all eligible participants including foreign applicants. The possibility of using electronic means for conducting such examinations, wherever feasible, and of providing opportunities for taking such exams in the home country of the foreign services supplier should also be explored having regard also to the extra costs and administrative burdens this might entail amongst all relevant factors.
- (iii) Fees charged by the competent authorities should have regard to the administrative costs involved and should not become a barrier in themselves for practising the relevant profession.
- (iv) Reasonable time frames should be met for verification of the foreign professionals' competence to supply the service so as not to prejudice the service supply itself.
- (v) Appeal/review channels should be provided for non-recognition of qualifications. Further, possibility of re-submission of applications and other materials substantiating the case for meeting the qualification requirements should be allowed.

- (vi) The existing contact points provided for under Article IV:2(b) may need to be strengthened so as to provide a mechanism for supply of information on qualification requirements and procedures to interested service suppliers of developing country members.

IV. CONCLUSIONS

14. Detailed discussions on the elements mentioned above and other elements, as found appropriate by members, would contribute to the development of effective disciplines on qualification requirements and procedures. This would be a critical step in providing actual market access to movement of natural persons under Mode 4.

15. We look forward to substantive engagement by members on this proposal.
