

WORLD TRADE ORGANIZATION

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Working Party on Domestic Regulation

REPORT ON THE MEETING HELD ON 20 MARCH 2001

Note by the Secretariat

1. The Working Party on Domestic Regulation held its tenth meeting in the morning of 20 March. The agenda for the meeting is contained in Airgram WTO/AIR/1509. Due to the strong interest of delegations, as well as the time constraints of a half day meeting, debate focused almost exclusively on the *Checklist of Issues for WPDR*. At the conclusion of the meeting, Scott Gallacher of New Zealand was appointed as the new Chairperson.

(a) Discussion of Concepts Relating to the Development of Regulatory Disciplines

2. The Chairperson noted that the Members had an excellent discussion of the *Checklist* at the previous week's informal meeting on 14 March, and said the comments made would be reflected in the next informal summary of the *Checklist* discussions, together with the comments from the formal meeting (see Annex). For the benefit of Observers and others not present, he briefly summarized the informal discussions. In respect to General Issues, he said Members had expressed great interest in having the Secretariat prepare a listing of examples of GATS Article VI:4 measures, and that two delegations said they would be contributing examples. Some delegations had raised the question of whether it might be necessary to revise the structure of the *Checklist*, including moving some paragraphs, such as para 12 on Administrative burden, to the General Issues section.

3. Regarding Transparency, he said issues raised that might benefit from further discussion at the formal meeting included the question of administrative burden, and constitutional or other legislative barriers to prior comment provisions. For example, one delegation had commented that the question of administrative burden should not be discussed selectively, but rather in more general terms including the existing GATS transparency requirements of Article III. Another delegation had mentioned a recent OECD study on prior comment provisions.

4. Regarding Necessity, he summarized by saying that a number of issues were raised which might benefit from further discussion at the formal meeting, including the question of what would be the function of listing specific legitimate objectives as part of the necessity test. In this respect, Members had asked whether the function was to discipline regulators, or more to give them guidance. Another potential topic for further discussion was the question of the Article XIV exceptions provisions and the legitimate objectives to be specified in the necessity test.

5. The Chairperson then noted that some delegations had recently circulated new papers, and asked if they wished to introduce them. The representative of Japan introduced their paper (Job No. 1954, dated 20 March), saying that it contained general examples of actual regulatory issues, classified by categories, and was based on consultations with domestic services providers. The representative of Australia then introduced a paper (circulated in the meeting), noting that it was based on barriers encountered by Australian services exporters, classified according to horizontal and sectoral measures.

6. The representative of Brazil asked the delegation of Japan what, in their view, was the difference was between an authorization and licensing, as both were mentioned in Japan's paper. The

representative of Japan replied that they felt authorization was closely related to licensing and qualification requirements, and therefore covered by VI:4.

7. The delegation of Hong Kong, China noted that Australia's examples seemed to include measures subject to scheduling under GATS Articles XVI and XVII, and asked for Australia's clarification. The representative of Australia agreed that their examples did go beyond VI:4 to included other types of measures. The representative of the United States said that Australia's clarification was useful, and noted that his delegation was also working on an examples paper. He asked if Australia would anticipate non-VI:4 examples being left out of the Secretariat paper, to which the representative of Australia replied affirmatively.

Item 1- Examples of actual regulatory issues

8. On item 1 of the *Checklist* summary, the Secretariat apologized for presenting a paper listing examples of regulatory measures covered under GATS Article VI:4, noting that the dividing line between measures covered under Article VI:4 and those covered under Articles XVI and XVII was not always easy to draw. The Secretariat hoped a paper could be produced before the next meeting of the Working Party.

9. The representative of the United States felt it was important to begin to identify the specific problems to be addressed by the negotiations on domestic regulation, and also emphasized the importance of the linkage between transparency and necessity. The delegation of Korea hoped the Secretariat list would also reflect current negotiating proposals, as well as stating that transparency issues should not over-ride necessity provisions in respect to the development of disciplines.

Item 2 - Linkage between transparency and necessity

10. The delegation of Canada concurred on the importance of the linkage between transparency and necessity, and said that the focus should be on measures at the federal level. The delegation of Brazil agreed with Korea that transparency measures alone were not enough, and was not convinced that the focus should be limited to the federal level. He said that the administrative burden of any new disciplines on developing countries must be seriously taken into account. The representative from Hong Kong, China agreed with the points made by Korea and Brazil. The delegate from Chile agreed with the interventions of Brazil and Hong Kong, China, and stated that most restrictions were found at the sub-national levels.

11. The delegation of the European Communities said that Article III requirements were already far-reaching and should be a guide. The transparency/necessity link was important, as transparency could reduce the trade-restrictiveness of a measure. Transparency alone, however, was not sufficient. The delegation of Uruguay said that no priority should be given to either transparency or necessity, and that Members should focus on determining the content of disciplines. The representative of Australia agreed with previous speakers that both transparency and necessity were important, and said that the focus should be on creating disciplines.

12. The representative of the United States said, with respect to Brazil's comments, administrative burden was a valid point, and should be a central consideration. In respect to the *Checklist* discussions, this item should be moved to the General Issues section, as administrative burden applied to both transparency provisions and necessity. The issue of scope was also important, in respect to federal and sub-federal measures, etc., and he agreed with Uruguay's comment that no priority should be given *a priori*.

13. The delegation of the European Communities said that, on the issue of federal vs. sub-federal measures, they felt the level of the measure should not be restricted in respect to the development of

disciplines. The representative from Hong Kong, China stated that Members should not distinguish between type of measure, as the same rules could be implemented in a variety of legal forms. While transparency should primarily be addressed in respect to Article III, it should also be addressed in respect to Article VI:4 when necessary. He noted that the issue of administrative burden was of major importance to regulators, especially in regard to necessity provisions, and said he had no objection to moving the discussion of this item to the General Issues section.

14. The Chairperson concluded by noting that Members had highlighted the major points requiring further discussion. The administrative burden of both necessity and transparency provisions was an issue of continued concern. Members had also discussed the scope of work, distinctions between types of measures, the linkage between transparency and necessary, the overall VI:4 mandate, and the administrative burden placed on regulators.

Item 8 – Transparency objectives

15. The Chairperson stated that, as agreed in the informal meeting, Members would discuss transparency issues before necessity, to ensure sufficient time for discussion. The representative of the United States said that Members had not sufficiently discussed transparency objectives. Members needed to consider a variety of transparency disciplines, including building on Article III requirements. Examples included reasonable advance notice before implementation, making publicly available requirements and criteria for licenses, reasonable time periods for responding to applications, providing information on why an application was denied, and providing information on procedures for the review of administrative decisions.

16. The representative of the European Communities noted that the main importance of transparency was to increase predictability and legal certainty. Therefore, transparency needed to be directed towards operators (services providers), rather than towards governments. In respect to provisions going beyond Article III, the accountancy disciplines were relevant. Regarding prior comment, she was sceptical in respect to creating new obligations. The representative of Chile observed that transparency was one of the concepts behind VI:4(a). Implementing prior comment provisions, however, would be difficult.

17. The delegate from Hong Kong, China agreed with the EC on focusing on services and services suppliers, and that the accountancy disciplines were very relevant. It was not clear, however, what level of detail would be required for general transparency disciplines. The representative of Malaysia asked for additional information on the U.S. examples, including with respect to reasonable advance notice. The representative of the United States replied that reasonable advance notice meant that final laws should be published with a lag before actual introduction. He agreed with the EC points on transparency. Regarding the comments by Hong Kong, China, he said that many aspects of the transparency provisions in the accountancy disciplines were actually quite general.

18. The representative of Brazil said that Article III and the other GATS transparency provisions were already sufficient, and should be drawn upon. The representative of Uruguay agreed that Members needed to look to Article III first in respect to transparency. On prior comment, he noted there were different legal systems among Members and that, in Uruguay, there was no legal mechanism for prior comment. Uruguay already required the publishing of measures with advanced notice, and most Members probably had similar requirements.

19. The delegate from Hong Kong, China said that the requirements of VI:4 implied the need for additional transparency provisions, while Article III was mostly about notifications to the WTO. The representative of Thailand said that, although transparency was important, disciplines should be in line with existing Article III requirements, and that no prior comment provisions should be introduced.

20. The Chairperson summarized discussion under this item by stating there was still a broad range of opinions among Members on how to deal with transparency.

Item 9 – Prior comment provisions

21. The representative of Singapore said they were not in favour of prior comment provisions, and they would not be consistent with Singaporean law. Measures, however, were published in advance. The delegate from Cuba said they also had no legal provisions for prior comment. The representative of Indonesia said they could not accept prior comment provisions. The representative of Turkey said they had serious concerns with prior comment. The representative of Venezuela was also not in favour, and said their constitution did not envisage prior comment. The representative of Malaysia said they had difficulties with prior comment, and the representative of Brunei said they agreed with the views of the other ASEAN members.

22. The Chairperson summarized discussion under this item by stating that several delegations had indicated the difficulties they would face with respect to the introduction of prior comment provisions.

Item 10 – Notifications related to prior comment provisions / Item 11 – Compliance with existing notification requirements

23. The representative of Poland, referring to earlier discussions, said that any transparency provisions should be addressed towards governments, not operators. There was also no need to publish or notify draft legal acts, he said, and any new disciplines should be in line with existing GATS notification requirements. His government was not in favour of prior comment provisions.

Item 12 – Administrative burden

24. The Chairperson noted that Members had discussed this item earlier. He asked if any additional Members wished to comment on the issue of administrative burden, and whether any transparency provisions to be developed should apply at the sub-national level. The representative of Cuba said he agreed with other delegations that the existing GATS transparency requirements were sufficient, and that the introduction of prior comment provisions would be an additional administrative burden for most developing countries.

Item 3 – Legitimate objectives

25. Turning to the issue of necessity, the Chairperson noted that a number of interesting questions had been raised in the informal meeting, as well as in earlier discussions, and asked Members if they wish to make further comments. The representative of Poland said the listing of legitimate objectives should be illustrative, and non-exhaustive, with no legal power. The delegate from Japan agreed with Poland, and noted that, in the informal meeting, she had asked what would be the function of listing legitimate objectives. She reiterated Japan's view that the determination of legitimate objectives rested with each government, and said any listing should be short, illustrative, and non-exhaustive.

26. The representative of Korea said examples of legitimate objectives were needed, as they could provide guidance to regulators, and that the accountancy disciplines and VI:4(a) were useful in this regard. A long listing would not be useful, nor would it be feasible to list non-legitimate objectives. The representative of the European Communities noted Members' concern that a listing could potentially restrict their autonomy to regulate, and said that a listing was not an indispensable requirement. She observed that, compared to the wide-ranging requirements of the GATS, the

objectives listed in the TBT and SPS agreements were much more restricted in scope and technical, while the accountancy disciplines focused only on one profession.

27. The delegate from Hong Kong, China said a short, illustrative list might be the right option. Still remaining, however, was the question of whether a listing was actually needed, i.e. of how a panel would view this issue and whether the existing wording of VI:4 was already sufficient. He observed that the protection of consumers was not specifically mentioned in VI:4. Regarding legal status, he said disciplines could not simply provide guidance, as they would be legally binding under the GATS.

28. The representative of Canada agreed there was a question on the relevance of an illustrative list, and reiterated that the determination of legitimate objectives rested solely with the government concerned. The delegate from the United States noted there appeared to be contradictory expectations, i.e. the question of whether the disciplines would be useful advice, or instead legal constraints. He questioned the usefulness of attempting to create a specific listing, and noted that regulators might want to ensure that their “favourite” legitimate objectives were specifically included in any listing that was developed.

29. The representative of Australia favoured a short, illustrative list, and said they had not considered a list to be legally binding, but instead guidance for regulators. The representative of Thailand had some experience with panel and Appellate Body rulings, and said that so far the Appellate Body had never questioned the legitimate objectives set by governments. It was the individual Member’s responsibility to determine what were legitimate objectives. Therefore, she was sceptical about creating a listing.

30. The representative of the European Communities said that, according to the GATS Preamble, the national policy objectives as defined by Members were already legitimate and, therefore, did not need further clarification. The representative of Paraguay expressed concern over the impact on dispute settlement of drawing up a list. He asked what the status of legitimate objectives would be in a panel case, and who would decide. The representative of Singapore said there was need to reflect further on the issue. The representative was sceptical about the need for a list, considering that panels had never questioned the legitimate objective set by governments. He agreed that the language of the GATS preamble was useful, and noted that Members did not want to question legitimate objectives at this stage.

31. The Chairperson noted that substantial differences of opinion remained, and asked whether the Secretariat wished to comment on the legal aspects. The representative of Malaysia also asked what the motivations had been for the listing in the accountancy disciplines, and what would now be the currently legal implications of this listing. The Secretariat replied that the focus at the time was only on accountancy, and that Members had looked at the TBT and SPS agreements for guidance. If Members wished to have a necessity test, and at the same time give wide flexibility to regulators, the Secretariat stated, they might consider the need to give some specific guidance to regulators in order to help prevent disguised restrictions.

32. The representative of Brazil said it was appropriate to discuss the extent to which VI:4 measures could be compared to TBT and SPS measures. He stated that VI:4 measures appeared to extend well beyond the scope of TBT and SPS measures. The delegate from Mexico noted that the previous comments made by Mexico and other delegations during the informal meeting would be added to the summary of *Checklist* discussions. In respect to the points made by the Secretariat, he noted that the TBT and SPS agreements contained the wording “*inter alia*” because it was not possible to create an exhaustive listing. The point was that legitimate objectives changed, and evolved, over time. Therefore, an open-ended listing was required.

33. The representative of Guyana said that the objective was to facilitate the provision of services, and noted that there were linkages between Articles III, VI, and XVII. He stated that Members must avoid measures resulting in governance from outside their territory, e.g. foreigners determining domestic legislation. Guyana reserved the right to block anything interfering with their right to regulate.

34. The Secretariat agreed with the earlier intervention that a complete listing of legitimate objectives in accountancy would have been impossible, but pointed out that the four objectives stated in the accountancy disciplines were specifically agreed by Members as being legitimate. This aspect would be the effect of listing legitimate objectives. At the same time, the Secretariat noted, the “*inter alia*” wording recognized the existence of other legitimate objectives.

General issues

35. The Chairperson, noting the time constraints, asked for Members’ thoughts on other issues. The representative of the European Communities stated that continued work on regulatory disciplines was crucial, and that the EC would soon circulate a paper which attempt to “take stock” of discussions to date by the Working Party. The *Checklist*, and the summary of *Checklist* discussions, had been useful, but the EC felt that Members should now shift from discussion of general concepts to the creation of regulatory disciplines.

36. The representative of Uruguay, referring to page 4 of the summary of *Checklist* discussions, concerning the scope of the necessity test, requested the addition of the following statement, i.e. “Some delegations said that, in accordance with GATS Article VI:1, any horizontal disciplines should only be applicable where specific commitments have been made”. The representative also asked that, in the summary of *Checklist* discussions, this issue be moved to the General Issues section. The Chairperson noted that the summary was under his authority, and said that Uruguay’s points would be recorded in the minutes of the meeting, including the summary.

37. The representative of Mexico supported Uruguay. He also said it was too early to start drafting disciplines. The representative of the United States said that Uruguay’s point was interesting, but noted that VI:4 did not make any reference to whether the creation of disciplines was related to the existence of specific commitments. In respect to the issue of criteria for the necessity test (Item 5 of the *Checklist*), he said that Members should reflect further on the question of whether regulatory autonomy was constrained by the necessity test. The representative of Brazil said he fully supported the points raised by Uruguay, and that Members should also refer to paragraph 5 of Article VI.

38. The representative of Malaysia supported both points made by Mexico. The delegation of Australia said that, in respect to regulatory autonomy and the necessity test, it was important that regulators bear in mind their GATS commitments when pursuing national policy objectives. The delegation referred to the use of regulatory impact analysis in Australia, which included a process of considering the necessity of a measure. In this way Members could exercise their sovereign authority while also making use of the necessity test.

39. The delegation of Poland said that, in respect to scope, disciplines should be based only on the 5 elements specified in VI:4. He also agreed with Uruguay. The representative of Chile said that, on the question of the applicability of disciplines, he noted that the background document S/C/W/96 indicated the question was open. The delegation of Cuba said it was too early to create disciplines. The representative of Thailand supported Uruguay and Malaysia, saying that disciplines should only be applicable where specific commitments have been taken. The representative of Hong Kong, China welcomed the EC paper. He said it was not too early to begin creating disciplines, and noted that the Working Party had already been discussing concepts for nearly two years. The representative of the

United States said the use of regulatory impact analysis was an interesting idea that might be explored further.

40. The Chairperson concluded by stating that further discussion of the issues was required, and that additional written input from Members would be needed. Due to time constraints, the remaining agenda items would unfortunately need to be carried over until the next meeting.

(b) Development of General Disciplines for Professional Services

41. Due to time constraints, discussion under this item was deferred until the next meeting.

(c) Organization of Future Work

42. Due to time constraints, discussion under this item was also deferred until the next meeting.

(d) Date of Next Meeting

43. The next formal meeting is scheduled to be held in May, in connection with the next meeting of the Council.

(e) Appointment of the New Chairperson

44. Members approved the appointment of Scott Gallacher of New Zealand as the new Chairperson of the Working Party.

ANNEX

INFORMAL SUMMARY OF DISCUSSIONS ON THE *CHECKLIST OF ISSUES FOR WPDR*

(As requested by Members at the WPDR meeting of 29 November, this informal summary of discussions has been continually updated on the Chairperson's responsibility to reflect the current views of Members on the *Checklist of Issues for WPDR* (Job No. 5067, dated 17 August 2000). Like the *Checklist*, this summary does not prejudice the scope or content of the issues discussed, nor the ability of Members to raise other related issues.

General issues

One Member stated that consideration should be given to the temporary nature of GATS Article VI:5. The Secretariat was asked to comment, and stated that Article VI:5 would need to be addressed following the creation of regulatory disciplines under Article VI:4.

1. Examples of actual regulatory issues:

Members agreed to have the Secretariat list examples of the kinds of measures that would be addressed by disciplines under GATS Article VI:4, based on contributions by Members and a review of the Working Party on Professional Services (WPPS) accountancy materials by the Secretariat. The Secretariat paper was to list specific measures not already found in the accountancy disciplines, which were also not XVI/XVII measures. The Chairman noted that the elaboration of this list would not preclude parallel discussions among Members on the same issue.

2. Linkage between transparency and necessity:

Delegates referred to both the advantages (increased accountability) and disadvantages (additional administrative burden) of greater transparency. Several delegations stated that greater transparency in the regulatory process could contribute to ensuring that regulations would not be more trade restrictive than necessary. Others said that both transparency and necessity were important: transparency alone had its limits, and therefore could not be a substitute for regulatory disciplines. Some delegations said Members should instead focus on deciding the contents of the regulatory disciplines to be developed.

Some Members said the focus of transparency should be the central government level, while others disagreed and noted that most restrictions were to be found at the sub-national levels. One delegation said differences in legal frameworks should be considered. Another delegation said Members should not distinguish between types of measures, as the same requirements could be implemented via a variety of legal mechanisms. A third delegation said that Members should be careful not to prejudice what kinds of disciplines were needed.

3. Scope of GATS Article VI:4

Nearly all the delegations making comments felt that GATS Article VI:4 did not extend beyond the five items listed. The definitions in paragraph 4 of S/C/W/96 were generally felt to be acceptable, but could be reviewed if necessary. A number of delegations said any horizontal disciplines should only be applicable to sectors where specific commitments have been made; other delegations felt this was also an issue for negotiation. Some delegations said that, in accordance with GATS Article VI:1, any horizontal disciplines should only be applicable where specific commitments have been made.

4. Administrative burden:

A significant number of Members agreed that the administrative burden of any regulatory disciplines that were developed was a central consideration. A number of delegations said that, before creating disciplines, it was necessary to analyze whether regulatory disciplines would create too heavy an administrative burden on developing countries.

Necessity

5. Legitimate objectives:

Many Members making comments favoured the creation of a concise, non-exhaustive, illustrative list of legitimate objectives. Many also felt a listing of "non-legitimate objectives" would be too limiting, and was undesirable. A number of delegations stated they were not necessarily opposed to a positive list, but simply had some doubts as to whether it would actually be possible to put together a positive list, as it could become too large or too difficult to reach a consensus on a smaller list. One Member said that international standards, while still not very widespread in services, could nonetheless be referred to in this respect. Several delegations said the determination of legitimate objectives rested solely with Member governments.

One delegation asked what kind of function Members had in mind for a listing, and whether a necessity test would still be required in respect to agreed legitimate objectives. A number of Members expressed concern that a listing could potentially restrict their autonomy to regulate, and some asked whether the existing wording of VI:4 was already sufficient. One Member observed that the protection of consumers was not specifically mentioned in VI:4. Some delegations did not wish a listing to be legally binding, but instead only provide guidance for regulators. One delegation said that, according to the GATS Preamble, the national policy objectives as defined by Members were already legitimate and, therefore, did not need further clarification. Several Members noted that the Appellate Body to date had never questioned the legitimate objectives set by governments.

Several delegations were of the view that Members should give more consideration to the existing Article XIV provisions; another delegation pointed out that VI:4 disciplines were obligations, while XIV measures were exceptions to GATS provisions. Several Members stated that priority should now be given to the creation of specific disciplines, and the listing of legitimate objectives should come afterward. Other Members explicitly disagreed. The issue of horizontal-versus sectoral-level listings of legitimate objectives was generally thought to be an issue for

6. Criteria for the necessity test:

The Chairman noted that documents on this topic had been submitted by Members. Several delegations said they had begun domestic analyses of the implications of the differences in terminology. One Member asked where the burden of proof would lie in respect to necessity. Another expressed concern over the Working Party attempting to define terms whose application extended beyond services trade and should be defined by panels or the Appellate Body. A number of Members asked what the objectives of the necessity test would be, i.e. whether it was intended to discipline regulators, or to help give them guidance.

One delegation stated that, regarding the question of whether regulatory autonomy was constrained by the necessity test, the chapeau of the GATS, which unequivocally recognized Members right to regulate, was overriding. At the same time, there were also the mandates given in Articles VI:4 and XIX, for ensuring that regulations were not unnecessarily trade restrictive and

promoting trade liberalization, respectively. Regulatory autonomy was nonetheless preserved, as Members were free to pursue the policy objectives suitable for their domestic environments. While pursuing this right to regulate, regulators needed to be mindful of their GATS commitments, as well as the international trade implications of their regulatory options.

The Secretariat was asked whether it had previously compiled information on the jurisprudence relating to the application of necessity in the WTO. The Secretariat noted there was an existing paper on this issue from the Committee on Trade and the Environment (document WT/CTE/W/53/Rev.1, dated 26 October 1998), and suggested that, after examining this paper, Members could decide whether wished to have additional work done. The Chairperson said there was the question of updating, after Members had read the document.

A question was raised concerning whether there was a difference between restrictiveness and burdensomeness in the context of Article VI:4. The Secretariat replied that there was a difference, and that a measure could be more burdensome than necessary, but not to the point of being trade restrictive and vice-versa.

7. "Third aspect" of the necessity test:

One delegation said that consideration must be give to the criteria to be used in applying the "third aspect" (i.e. the idea that a measure that has the effect of restricting trade can be considered "necessary" only if there is no alternative measure less restrictive of trade which may be reasonably available to a Member to achieve the same policy objective); another delegation said that the "third aspect" could be excessively burdensome considering the vast scale of services sectors. The reply was made that the "third aspect" was in fact a means for examining alternatives to particular regulations.

Transparency

8. Definition of regulations:

One delegation stated it wished to clarify that, in the context of transparency disciplines, legislative processes were excluded from consideration by the Working Party as one of the types of regulation to which prior comment requirements could be applied. Other delegations agreed, but felt there may be no need for a new definition, as regulations were already included under the GATS term "measure" as defined in Article XXVIII. One delegation stated that their only legislative mechanism for prior comment was for standards under the TBT and SPS agreements. One representative said the "measures" mandate was clear, but that it was in the context of developing "any necessary disciplines". The representative said that it was still early in the process, and that Members were setting their sights too low if they focused exclusively on all measures in respect to transparency disciplines.

A number of delegations were of the view that it would not be appropriate to have some disciplines applicable to measures, and others applicable to only a subset, i.e. regulations. One delegation suggested that, in such cases, Members could instead consider additional commitments in schedules as an alternative option. Another delegation said that some flexibility may be required in terms of the application of specific disciplines. A third delegation noted the different realities and legal systems among Members, and said it was necessary to be realistic, and focus on disciplines applicable to all.

One delegation said that Members should consider whether regulations as defined under the GATS were equivalent to those as defined under the TBT and other WTO agreements, and whether notification requirements should only apply in areas where no international standards existed.

9. Transparency objectives:

Several delegations urged caution in regard to further transparency obligations, and asked Members to consider costs as well as benefits. They noted this item was related to item 12 of the Checklist concerning administrative burden. One delegation stated that dual standards of notification, e.g. between different levels of government, could not be permitted in regard to transparency provisions.

Responding to a question on the costs and benefits of transparency, one delegate said that transparency benefited consumers and companies most, as it would assist in creating a more predictable trading environment, and more transparent ways of doing business, but that there would also be benefits for governments in terms of promoting foreign market access. The delegate noted that while transparency had costs, particularly at the sub-national levels, the use of the Internet and other technologies could help reduce those costs.

One delegation said that not enough discussion had taken place on transparency disciplines, including building on the variety of transparency provisions contained within the accountancy disciplines. Other delegations noted that the importance of transparency was explicitly recognized in Article VI:4 (a), and that the VI:4 mandate implied a need for additional transparency provisions. Several delegations agreed that the most important aspect of transparency was to increase predictability; therefore, transparency disciplines needed to be directed towards services providers, not towards governments, and there should be no new notification requirements. Some delegations, however, said that Article III requirements were sufficient, and there should be no new measures.

10. Prior comment provisions:

Many Members opposed the creation of any prior comment provisions, saying they were unnecessarily burdensome, especially for sub-national entities. One Member noted that the OECD was preparing a paper on this issue. One Member expressed the view that prior comment provisions could have similar effects to necessity provisions, and said that Members could examine and compare the administrative burden of these two alternatives. Another Member asked towards whom prior comment provisions should be targeted, and how such provisions could be made workable at the multilateral level.

Some delegations stated that prior comment provisions as part of the law-making process were not permitted under their domestic legislation. Many governments, however, did publish new measures well in advance of their entry into force. One Member observed that the accountancy disciplines had a "best endeavours" clause, and said this could be repeated. Other Members said caution was required, and that the definitional and prior comment issues needed to be examined in greater detail.

11. Notifications related to prior comment provisions:

One delegation said that notifications in government gazettes should be the minimum requirement, with Internet listings also encouraged, but that notifications to the WTO were not required. Others, as noted above, opposed the creation of any prior comment provisions.

12. Compliance with existing notification requirements:

Several delegations stated that the notification requirements under GATS Article III were not being observed, and needed strengthening. Other delegations were opposed, stating that Members already had difficulty meeting existing requirements. One delegation said there seemed to be some

confusion among Members concerning the differences in the transparency criteria of Article VI and of Article III.

13. Appropriate levels of transparency

One delegation asked whether the OECD had conducted work on cost-benefit analyses in respect to transparency provisions. The Chairperson asked the Secretariat to make an enquiry.
