

Working Party on Domestic Regulation

REPORT ON THE MEETING HELD ON 30 SEPTEMBER 2003

Note by the Secretariat¹

1. The Working Party on Domestic Regulation (WPDR) held its twenty-third meeting on 30 September under the chairpersonship of Mr. Johannes Bernabe of the Philippines. The agenda for the meeting is contained in Airgram WTO/AIR/2170. Members agreed to adopt the agenda.

A. DEVELOPMENT OF REGULATORY DISCIPLINES UNDER GATS ARTICLE VI:4

1. Discussion of Concepts Relating to the Development of Disciplines

Singapore's paper on GATS Article VI:5

2. The Chairperson noted that the first item on the agenda was the *Development of Regulatory Disciplines under GATS Article VI:4*, with the first sub-item being the *Discussion of Concepts Relating to the Development of Disciplines*. At the last formal meeting on 1 July, the delegation of Singapore had introduced a paper on GATS Article VI:5, contained in JOB(03)/113 dated 11 June, as a follow-up to their intervention at the May formal meeting. Members made extensive comments, as recorded in the Report on the Meeting, as well as requesting comments from the Secretariat. The Chairperson asked if Singapore wished to make any initial comments, before he opened the floor for further discussion of the paper.

3. The representative of Singapore said the paper was submitted to facilitate discussions with respect to how the elements in Article VI:5 could be incorporated into disciplines under Article VI:4. A number of delegations had made useful comments at the last meeting with regard to such issues as "reasonable expectations" and nullification and impairment, but further consideration was needed. He noted that some delegations had indicated they were not comfortable with the idea of a Secretariat paper on the negotiating history of Article VI:5, and suggested that the Secretariat might instead point out references to Uruguay Round drafts regarding Article VI:5.

4. The representative of Australia said that Singapore's paper raised several important issues, and that he supported the suggestion for additional information from the Secretariat. He asked the Secretariat to specifically examine the three issues in paragraph 9 of Singapore's paper. The Chairperson asked Members to comment on the suggestion for additional information from the Secretariat.

5. The representative of the Republic of Korea said that the standstill principle should remain valid. Regarding the phrase "at the time", the reference point should be the time of the completion of negotiations. He noted that the Secretariat had previously explained that VI:5 was based on non-violation cases according to GATS Article XXIII:3, and asked whether disciplines under GATS Article VI:4 should instead be subject to Article 3, paragraph 8 of the DSU. The current VI:5 only applied to substantive aspects, not procedures, he noted. On Singapore's idea, Korea supported the proposal.

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

6. The delegation of Japan said the relationship between GATS Articles VI and XXIII was very important. In their view, paragraphs 1 and 2 of Article XXIII applied to Article VI:5 (a)(i), while paragraph 3 applied to VI:5(a)(ii). Therefore, it would not cause any problem if Article VI:5 disappeared, as Article XXIII would still remain applicable.

7. The delegation of the United States said that VI:5 "spoke for itself" and was an interim provision. They agreed with earlier comments on avoiding abstract discussions. The U.S. had been concerned about the idea of a Secretariat paper; they could, however, accept purely factual information being provided by the Secretariat, without trying to answer paragraph 9 of Singapore's paper.

8. The delegation of Canada noted they had also expressed some hesitation at the last meeting, but that Singapore's idea on references to Uruguay Round drafts was useful. The delegation of Hong Kong, China said that they were flexible on Singapore's idea. Members needed to draw a distinction between those in Singapore's paper from elements that pertained to the transitional nature of Article VI:5, and those elements which were designed to ensure that the standards established by Article VI:4 would not be unduly nullified or impaired. With regard to the negotiating history, the delegation was interested in knowing why reference was made in Article VI:5 to the criteria established by Article VI:4.

9. A representative of the Secretariat considered it unlikely to find a substantial amount of documented history on Article VI:5, which had been negotiated subsequent to the negotiations on the rest of Article VI. Much of the negotiation had taken place in informal discussions, based on room documents. The Secretariat, however, could check what information was available. Of course, any comments from the Secretariat did not constitute an interpretation of the GATS, which only Members could give. Regarding the burden of proof, for example, the Secretariat could only highlight the existing jurisprudence. The answers to paragraph 9 of Singapore's paper would depend on the kind of disciplines Members might wish to create.

10. The Chairperson concluded by suggesting that Members ask the Secretariat to find files or documents on the history of Article VI:5, and to report at the next meeting. This should not include personal notes from the file, but only circulated documents. Members approved the suggestion.

EC Proposal for Disciplines on Licensing Procedures

11. The Chairperson noted that, at the July meeting, the delegation of the European Communities had introduced a proposal for disciplines on licensing procedures, subsequently circulated as S/WPDR/W/25, dated 10 July 2003. As with Singapore's paper, Members had made extensive preliminary comments, which were also recorded in the Report on the Meeting. He opened the floor for further discussion of the paper, after first asking if the European Communities wished to make any initial comments.

12. The representative of Hong Kong, China said that another important aspect of regulatory disciplines would be qualification requirements and procedures, and that it would definitely be useful to have further inputs from Members. He supported the broad scope and non-prescriptive nature of the EC proposal which, according to the EC, was complementary to Japan's proposal. His delegation shared some questions raised by other delegations at the previous meeting, and sought further elaborations. On sub-paragraph 2, of paragraph 19, he wished to know what was meant by "neutral in application". On sub-paragraph 7, he asked how the procedures on authenticity would not become overly burdensome. On sub-paragraph 11, he asked about the relationship between the first and second sentences. On transparency, as contained in sub-paragraph 12, the representative asked whether attention might also be given to procedures for the withdrawal of a license. On sub-paragraph 12 (h), he asked about the meaning of "public involvement", and what was intended by that provision, i.e. for what purpose was the information provided. On sub-paragraph 14, he said that the

best-endeavour provision should help reduce concerns over administrative burden. He believed that the review mechanism was important, and that sub-paragraphs 15-17 would be broad enough without being prescriptive. He asked how the EC saw the relationship between the three separate elements of those sub-paragraphs.

13. The representative of Australia said the EC proposal was similar to the approach used in Australia. On sub-paragraph 3, he asked what was meant by "separate" and, on sub-paragraph 4, what was a "reasonable period". On sub-paragraph 14, he asked who should be given the opportunity to comment, i.e. domestic constituencies or governments at the WTO, as well as what would be considered as "significantly affecting trade in services".

14. The representative of New Zealand supported the non-prescriptive nature of the paper, and believed it would be an important aspect of any disciplines to be created. On sub-paragraph 2, she also asked for more information on the definition of "neutral". On sub-paragraph 3, she asked if the EC had given any further thought to the requirement for competent authorities to be separate from suppliers. On sub-paragraph 4, she asked for further clarification on the requirement that applicants needed to approach only one competent authority, and whether it meant one competent authority per sector or for all sectors. On sub-paragraph 5, the representative asked for clarification, in practical terms, of the requirement that applications shall be possible at "any time", and what type of timeframe was envisaged. On sub-paragraph 8, she noted that an interim step between applications and approvals might actually slow down the process. On transparency, like Hong Kong, China, her delegation thought that the elements included were useful and comprehensive, but that further consideration should be given to their application across all sectors. With reference to sub-paragraph 12 (d), for example, she wondered if it could raise privacy issues in the medical or legal professions.

15. The delegation of the United States said that their comments did not prejudge the U.S. position on any necessary disciplines. Generally, they were hesitant to include a definition of licensing procedures in an annex approach, and noticed that the EC definition was different from that in the *Accountancy Disciplines (Disciplines on Domestic Regulation in the Accountancy Sector, S/L/64 dated 17 December 1998)*. In footnote 3, the EC definition of license included permits which, considering the definition of licensing procedures in paragraph 19, seemed to extend possible coverage to construction permits, discharge permits, occupancy permits, etc. Therefore, it might be useful to specify more clearly the types of authorization regimes to be included. The EC definition was a good starting point, but the term "prior condition" in paragraph 19 seemed too broad and sweeping. For financial services regulation, it was useful to recognize that the Committee on Trade in Financial Services allowed for more focused discussions. On paragraph 10, the U.S. agreed that discussions on domestic regulation should not address the "prudential carve-out". On sub-paragraph 3, the U.S. was also interested in clarification of the term "separate" as well as of the type of competent authority that was intended. The delegation asked if "it" in the same sub-paragraph referred to an independent regulator. On sub-paragraph 4, they were interested in the interpretation of "one competent authority", and asked why the wording "shall, in principle" was used.

16. The representative of Switzerland believed that Members should now concentrate on the possible elements that could constitute further disciplines, including those on licensing procedures, and agreed with Hong Kong, China that inputs regarding qualification requirements and procedures would also be useful. On sub-paragraph 3, she asked if professional bodies, acting impartially with respect to licensing procedures, could fulfil the requirement. On sub-paragraph 12, her delegation supported the comment from Hong Kong, China on procedures for the withdrawal of a license. Regarding sub-paragraph 12 (h), she asked for any concrete examples from the EC concerning public involvement.

17. The representative of Norway said that Part I. (Introduction) of the EC proposal was very useful. Reducing administrative burden was also a Norwegian government priority, and his government had last year presented an Action Plan to simplify administrative procedures. His

delegation welcomed work on licensing procedures in the WPDR; burdensome procedures could have administrative costs which hampered economic performance. The EC had taken a solid approach in using elements from the *Accountancy Disciplines* and other agreements. Specifically, on paragraph 19, regarding "other authorization regimes", he asked what types of regimes other than licensing were being considered. On sub-paragraph 10, on fees, the representative said the most important aspect should be that fee rates were publicly available. Any discriminatory charges would conflict with national treatment, and should be scheduled accordingly.

18. The representative of Japan noted that the EC proposal was complementary to Japan's proposal, and wondered if it might be incorporated into the draft annex. On paragraph 19, regarding the definition of licensing procedures, he asked for the EC's view on whether licensing requirements, qualification requirements and qualification procedures should also have detailed definitions. The representative also asked whether the EC shared Japan's view that simple registration requirements should not be covered by disciplines. He supported the idea of impartiality in sub-paragraph 3 and, on sub-paragraph 8, noted it was nearly identical to GATS Article VI:3 and, thus, it might be redundant. On sub-paragraph 5, he agreed with the acceptance of applications in electronic format. On sub-paragraph 12 (b), he sought clarification on whether it included local government licenses. He asked for information on any listing in the EC of services activities subject to licensing requirements.

19. The representative of Canada, in giving preliminary comments, associated himself with Switzerland's and New Zealand's comments on sub-paragraph 3 regarding the separation of service suppliers and the competent authority, and the challenge it posed to self-regulating professional bodies. He welcomed further discussion on the idea of neutrality as contained in sub-paragraphs 2 and 3. On sub-paragraph 9, he questioned whether the reference to public consultation requirements was needed, since the key issue was timeliness rather than the procedural requirements. On sub-paragraph 10, regarding fees, he questioned how it would apply to third parties separate from the licensing authorities. On sub-paragraph 12 (f), he asked for information on the meaning of technical standards, specifically as they related to licensing procedures.

20. The representative of Colombia was grateful for the EC and Japanese proposals. On Japan's proposal, she highlighted the approach taken, which facilitated analysis, and said that a complementary approach was needed for addressing the measures in the *Examples of Measures to be Addressed by Disciplines under GATS Article VI:4, JOB(02)/20/Rev.7 dated 22 September 2003*). On the EC proposal, she said it was important to discuss coverage. In Japan's proposal, paragraphs 3 and 4 appeared to be contradictory; she questioned the exclusion of measures on Mode 4 in Japan's proposal, stating that full coverage was the only way to approach all obstacles. On the EC paper, she noted the mention in paragraph 10 of "basic, common rules". The representative welcomed the mention of documentation requirements in sub-paragraphs 6 to 8, stating that they were one of the most complex barriers, especially for Mode 4. Disciplines should not address the discretionary power given to regulators, but instead should focus on transparency.

21. The representative of Indonesia, gave preliminary comments. On sub-paragraphs 4 and 5 in respect to timeframes and the competent authority, he said Members needed to look at them from different angles. In Indonesia, for example, sometimes there were multiple authorities and, because of internal arrangements, sometimes procedures took time, e.g. two months. As long as it was not an unnecessary barrier, such factors should be taken into account. On sub-paragraph 7, regarding authenticated copies, authorities sometimes needed the original documents due to the fraudulent use of new technologies. Sub-paragraph 14 might cause additional burden, he stated, especially for developing countries.

22. The representative of Mexico, regarding the scope of the EC paper, noted that paragraph 10 stated that disciplines on licensing procedures would not address substantive requirements. However, Article VI:4 did include such aspects. His concern was how to ensure that substantive requirements did not create unnecessary obstacles. On the question of language, the representative suggested that

reference be made to using the language of the country where the licensing request is made. On sub-paragraph 8, he enquired whether it should apply to local requirements as well. On sub-paragraph 14, clarification was needed on how comments would be considered.

23. The representative of the United States, in clarifying her earlier request, asked how the EC reconciled the use of terms from the Agreement on Import Licensing Procedures (AILP) with those from the *Accountancy Disciplines*. She asked if the EC's intention was to bring in elements from the AILP, without necessarily imposing licensing in all instances. On sub-paragraph 10, on fees, she noted that the *Accountancy Disciplines*' reference applied to licensing requirements, and asked why the EC had applied them to licensing procedures. She noted the EC statement on public involvement in the Report on the Meeting, and asked what role such public involvement would have in the awarding of a license, including whether objectivity might be affected if incumbent suppliers were involved.

24. The representative of Canada clarified the request on sub-paragraph 9. Canada's intention was not to question public consultation processes, but rather to enquire about the value-added of the last sentence of the sub-paragraph.

25. The representative of the European Communities thanked delegations for their extensive comments, and provided preliminary answers. On paragraph 10, regarding substantive requirements, she agreed those were part of the Article VI:4 mandate, and looked forward to other Member's contributions on that aspect. On Colombia's comments, she noted that the EC paper made no modal distinction. Regarding paragraph 19, the EC had attempted a definition of licensing procedures, as they thought it would be useful. The term "other authorization regimes" was used to accommodate differences in terms between Members, and was considered to include licenses, permits and similar types of authorizations. She did not fully understand the U.S. question on "prior condition". On sub-paragraph 2, the EC meant neutrality with regard to different market participants. On sub-paragraph 3, the formulation was intended to address different services sectors, recognizing that some authorities might not be independent of the market operators. Decision-making as a regulator should be separated from commercial interests, and she welcomed suggestions for alternative formulations. On sub-paragraph 4, the EC did not want to prescribe the meaning of "as simple as possible", but to establish it as a general principle. On sub-paragraph 5, there should not be a "season" for licensing, for example, only one month per year. On sub-paragraph 7, regarding the authenticity of documentation, pre-established procedures should help to reduce the administrative burden.

26. On sub-paragraph 9, the European Communities agreed the last sentence might seem redundant, but said that was an important element in many service sectors and, therefore, should be made explicit. Fees could not be clearly associated with either procedural and substantive requirements, but were an important issue for services suppliers. On sub-paragraph 12 (b), it would be useful for services suppliers to know which activities required a license. There was no intention to establish a common list for all Members. On sub-paragraph 12 (d), she asked for more clarification regarding the privacy issues involved. On sub-paragraph 12 (f), it would also be useful to have information on any technical standards which must be fulfilled. On sub-paragraph 12 (h), on public involvement, she said it was important for suppliers to know what determined the timeframe for giving a license. With regard to the EC, she could look for examples. On the application to local and municipal governments, the EC recognized that it was an issue, but followed the principle that the GATS applied to all levels of regulatory bodies.

27. The Chairperson noted two points requiring further clarification. One was the question on "prior condition", and the second the question on sub-paragraph 12 (d) regarding privacy issues.

28. The representative of the United States reformulated her question by noting that, in many instances, the EC was using provisions taken from other agreements, including goods agreements. She asked how the terms used in other agreements, such as "simple", "reasonable period", "one

competent authority", and "prior condition", were to be understood, and how they had been interpreted in the context of the agreements they were derived from. The representative of New Zealand said, concerning sub-paragraph 12 (d) and privacy issues, she had asked about discretion with respect to the disclosure of personal information on individual services suppliers.

29. The representative of Hong Kong, China also asked for further clarification regarding how the EC saw the relationship between the elements of sub-paragraphs 15 to 17 on procedures for the review of licensing decisions, including the ordering of the elements in the 3 paragraphs.

30. The representative of the European Communities, in response to the question on privacy, said that what should be known was not the personal information given by applicants, but rather whether the conditions required for a license differed between applicants. On Hong Kong, China's question on sub-paragraphs 15 to 17, the EC had attempted to be logical in regard to the sequencing, but they were open to any suggestions.

31. The Chairperson concluded by thanking Members for their questions and the EC for extensive preliminary remarks in reply.

Japan's Draft Annex on Domestic Regulation

32. The Chairperson recalled that Members at the July meeting had also made extensive comments on the revised version of Japan's *Draft Annex on Domestic Regulation*, circulated as JOB(03)/45/Rev.1, dated 30 April 2003. As recorded in the Report on the Meeting, Members' comments were followed by detailed responses from Japan. He observed that Japan had circulated a new paper as a room document, and asked if the delegation wished to make any initial comments.

33. The delegation of Japan noted that, while a number of delegations had said that immigration measures should be covered by disciplines on domestic regulation, others had said they should be treated separately, due to the broad coverage of immigration policy including security issues. Japan's room document was an attempt to identify which parts of immigration measures related to the five types of measures covered under GATS Article VI:4, and might be covered by disciplines on domestic regulation. Japan was not yet convinced whether any immigration measures should be covered by the proposed Annex on Domestic Regulation, and encouraged delegations to provide concrete examples to justify their inclusion. The assumption made in Japan's room document was that if disciplines were to apply, they would be applied only to measures committed under Mode 4, such as those regarding intra-corporate transferees, professionals and business visitors. The important criterion in Article VI:4 was whether domestic regulations relating to Mode 4 commitments constituted unnecessary barriers to trade. If so, rules such as the pre-establishment of application requirements, transparency requirements, or requirements to ensure that application procedures were not more burdensome than necessary could be relevant.

34. The delegation of Japan also said that the chart on the room document should be read from left to right. Immigration measures were organized differently across countries, and therefore the chart was only a simplified representation. Roughly speaking, there were two types of immigration measures: border controls, and permissions for activities after entering, such as stay permits, work permits, and visas for temporary stay for business purposes, for permanent stay, etc. As a whole, immigration measures came under paragraph 4 of the Annex on Movement of Natural Persons. However, some parts of measures for temporary stay for business purposes might be within the scope of the GATS. For example, if licenses and qualification requirements were defined as permissions needed to supply a service, work permits might be categorized as a type of qualification under Article VI:4. It would be questionable, however, whether other immigration measures such as entry and stay permits could be seen as permits which directly allowed a foreign service supplier to provide a service. In that case, immigration measures might be a pre-condition for acquiring a license or qualification for supplying a services, as China had pointed out at the previous meeting, and not a

licensing requirement *per se*. Members should share a clear concept of "immigration measures" when examining the coverage of disciplines, and any contributions on the extent to which Mode 4 measures should be covered by the proposed Annex on Domestic Regulation would thus be highly appreciated.

35. The Chairperson thanked Japan for the introduction of their room document, and then opened the floor for comments and questions by Members on the two papers.

36. The representative of the United States, in making preliminary comments, asked if in the chart Japan was implying a linkage between measures for temporary stay for business purposes and disciplines developed under the draft Annex on Domestic Regulation. She took note that Japan was not convinced that the draft Annex should include measures on Mode 4.

37. The representative of Hong Kong, China, noting that his comments on the room document were preliminary, made two observations. First, the diagram implied a linkage between VI:4 disciplines and the movement of natural persons, at least with respect to temporary stay for business purposes. Second, regarding the two boxes on the Annex on Movement of Natural Persons, the representative noted that paragraph 4 of the Annex prohibited measures from being applied in a manner so as to nullify or impair specific commitments.

38. The representative of Singapore, referring to para 4 of Japan's draft Annex, asked if there was any legal implication in capturing only one element, i.e. para 4, of the Annex on Movement of Natural Persons and not the others. He noted that Japan had taken a more holistic approach in the room document, and enquired if they were now considering adding additional aspects of the Annex on Movement of Natural Persons to the proposal.

39. The representative of India emphasized that Article VI:4 was equally applicable to all four modes of supply. The burden should be to prove that measures under the Annex on Movement of Natural Persons were not relevant to Article VI:4, he stated, and not the contrary. With regard to the room document, the coverage of measures should be seen in the context of the Annex itself, especially the requirement that measures not be applied in a manner so as to nullify or impair specific commitments. The representative noted that sometimes the visa and the work permit were the same, and could therefore be considered a license to provide the service. The determination of Article VI:4 measures would be easier if temporary movement was separated from permanent movement, he stated. Clarification was needed on the types of measures covered under Article VI:4. On the diagram, he asked whether Japan intended to imply that the requirements of qualifications were linked only to Article VI:4 disciplines on qualification requirements and procedures.

40. The representative of Chinese Taipei asked if the room document was intended to explain the meaning of footnote 3 of Japan's draft Annex. She stated that the definition of Mode 4 in the chart depended on the chart's structure, and as an example noted that some aspects of temporary stay could be covered under paragraph 2 of the Annex on Movement of Natural Persons. The representative also enquired why "limitations based on nationality" were linked in the chart to the category of "possible disciplines", including the implications for MFN.

41. The representative of Japan thanked Members for their questions and comments. Before responding to specific questions, he emphasized that the room document was intended to be a "thinking exercise" regarding the potential consequences of changing or removing paragraph 4 of Japan's draft Annex. A "working assumption" behind the room document was that disciplines would be applicable only where specific commitments had been made, including for Mode 4. On the U.S. question concerning measures for temporary stay for business purposes, Japan's diagram was intended only as an example. Hong Kong, China's comment on para 4 of the Annex on Movement of Natural Persons, also reflected Japan's understanding. On Chinese Taipei's question regarding limitations based on nationality, he noted that, under footnote 1 of the Annex on Movement of Natural Persons, visas were exempt from the MFN requirement. On Singapore's question, Japan was very flexible

about including para 2 from the Annex on Movement of Natural Persons; however, it was also suggested that examination would be needed at a later stage as to whether duplication of that Annex was appropriate.

42. The Chairperson concluded that there was much interest in Japan's room document, and that Japan might consider further refining the paper. He thanked delegations for their very active contributions, Singapore for clarifications, the EC for responding to the points made, and Japan for the room document. Members had very substantive debate, and preliminary thoughts from the previous meeting were discussed with more substance. With respect to Singapore's paper, some requests were made of the Secretariat on Article VI:5, and some delegates considered there was merit in further examining certain aspects, while others had demurred from making comments and were still reflecting on the issues.

43. On the EC proposal, the Chairperson noted that, since the EC had emphasized that the paper was intended to address one particular aspect of VI:4 disciplines, i.e. licensing procedures, it was almost an invitation to other delegations to address other aspects. On the modal application, the EC had clarified that no distinction was being made. With respect to the relationship between licenses and permits, the EC considered they were essentially the same. On self-regulating bodies, it was the principle the EC wanted to emphasize, and they welcomed further contributions. Substantive discussions occurred in regard to such issues as fees, transparency, and application to local and municipal levels. Certainly, however, there was room for further discussion, and some points could be further elaborated. On Japan's paper, there had been a fair amount of substantive comments, and there might be room for further elaboration. The Chairperson encouraged Members to consider submitting further proposals on disciplines, preferably before the year was over.

Examples Paper

44. The Chairperson then turned to the *Examples* paper, noting that, at the July meeting, the delegation of Chinese Taipei had introduced, as a room document, additional regulatory examples. Members had commented on the new examples, followed by a response from Chinese Taipei and a summing up by himself. The Secretariat had added the new contributions to the *Examples* paper, which was updated to reflect the discussions and then circulated as JOB(02)/20/Rev.7, dated 22 September. He then asked if Chinese Taipei wished to make any initial comments.

45. The delegation of Chinese Taipei thanked the Secretariat for incorporating the contributions into the *Examples* paper. Responding to questions raised at the previous meeting, Chinese Taipei's examples were designed to serve the legal objectives to ensure quality and standards of operation, transparency with regard to government regulations, and disclosure of information to the public. Regarding example 8 under qualification requirements in Annex I A., the delegation noted the qualification "subject to Members' interpretation". Chinese Taipei believed the example belonged under domestic regulation, because the quality of services provided by engineers in consulting firms using high-level technology directly affected the safety of citizens. Firms must include in their decision-making people who were familiar with government regulations, and had the necessary technical capacity, in order to meet their legal obligations.

46. The Chairperson noted that Members had previously indicated that they wished to offer additional substantive comments and to add more examples, as well as to avail of more opportunities for developing countries to participate. Some Members had also suggested that one way of taking the work forward was to examine the measures in the *Examples* paper in light of the provisions of Japan's proposed Annex.

47. The representative of Hong Kong, China noted that Members' recent efforts had been focused on the analysis of possible elements for disciplines. Nonetheless, the examples remained useful as a future "crosscheck" of the elements for disciplines by providing a practical context.

48. The Chairperson proposed that Members retain the item on the agenda, and encouraged Members to offer further examples. Also, as Members considered possible elements for disciplines, they could bear in mind the measures in the *Examples* paper or any other measures. Members accepted the Chairperson's suggestion.

49. The Chairperson moved to comments on any of the issues covered under the *Summary of Discussions* (i.e. General Issues, Transparency, Equivalence and International Standards), or under this agenda sub-item as a whole. He noted that the latest version of the *Summary* was circulated as JOB(02)/3/Rev.7, dated 23 September 2003. No further comments had been received.

50. The Chairperson then noted that Members had previously discussed having the Secretariat update the earlier paper on necessity (JOB No. 5929, dated 8 October 1999). As the revised Note had not yet been circulated, he asked the Secretariat to give an update on the situation.

51. A representative of the Secretariat said that, as agreed earlier and guided by Member's comments and requests, it had looked at how to update and expand upon the previous paper on necessity. The Secretariat had started by looking at different types of necessity, drawing distinctions between how it was used in exceptions provisions, such as Article XX of the GATT, compared to other types of uses, such as those in the TBT and SPS agreements. It had also looked at the existing jurisprudence of the application of such provisions. The process of internal consultations with other parts of the Secretariat was taking slightly longer than thought, but the Secretariat would have a paper in advance of the next meeting.

52. The delegation of the United States noted they might be submitting a contribution on the *Examples* paper.

53. The Chairperson concluded by reiterating Members' wish that the agenda item be retained, noting the benefit from continuing examination of the *Examples* paper.

2. Development of Disciplines for Professional Services

Recognition Issues

54. The Chairperson then turned to the other main aspect of the work on regulatory disciplines, the *Development of Disciplines for Professional Services*. The first topic under that item was recognition issues. He noted that, at the previous meeting, Members had made extensive comments on a paper from India, which had been introduced as a room document. The paper had subsequently been circulated as JOB(03)/192, dated 29 September 2003. Both Members' comments and India's responses were recorded in the Report on the Meeting. He asked whether India would like to make any additional comments before he opened up the floor.

55. The representative of India noted that, compared to the room document introduced at the last meeting, some additions were made in the JOB document. In order to stimulate discussion, recognition measures drawn from the Secretariat *Examples* paper had been included. Annex A of JOB(03)/192 listed certain specific examples related to recognition problems, and was intended to be illustrative, not exhaustive. The purpose was to examine certain aspects of recognition problems, which came into focus from looking at the examples. India's paper attempted to look at possible elements for resolving issues related to recognition. His delegation believed that recognition was certainly a mandate for the Working Party, and that it was of great importance with regard to Mode 4.

56. The representative of Japan noted that the Chairperson had said that the relationship between Articles VI:4, VI:6 and VII needed to be carefully examined. Article VI:6 contained some elements similar to recognition under Article VII; however, there was a clear difference in terminology between the two Articles. The main differences were that (1) the verification provided for under VI:6

was not used as a condition for a services license of the host country; and (2) VI:6 was applied on an MFN basis, in contrast with the special character of Article VII, which was exempted from MFN. Therefore, it would be inappropriate to develop guidelines based solely on Article VI:6, or as part of disciplines on domestic regulation based on Article VI:4. The representative noted that Japan's proposal contained some elements on recognition, and that the *MRA Guidelines* (S/L/38) for accountancy referred only to Article VII. He also pointed out that paragraph 2(b) of *Decision on Professional Services* (S/L/3) gave full effect to paragraph 5 of Article VII. As the development of international standards was very important for promoting MRAs, it would be useful to make an inquiry to the international professional organizations regarding the current status of their work on international standards.

57. The representative of New Zealand welcomed the increasingly substantive nature of the discussions on recognition issues, and said that India's paper was a valuable contribution. Her delegation was comfortable with having the WPDR, which had inherited the mandate from the Working Party on Professional Services, address the issue of the verification of the competence of professionals. She said that the issue was important for enjoying the benefits of commitments, especially for SMEs. Regarding the implementation of obligations under VI:6, New Zealand would be happy to take part in "show and tell" presentations on domestic processes for assessment. Her delegation was also very interested in India's proposal on Article XVIII commitments. On guidelines for recognition agreements, she felt that further multilateral work would be useful, and the *MRA Guidelines* for accountancy were a good starting point. Incorporating the outcome of the work on guidelines would require careful consideration, and would depend upon the nature of the final product.

58. The representative of India thanked delegations for their comments. On the relationship between the Articles, his delegation was aware of the arguments and, therefore, the options India had suggested could be considered as parallel processes. Regarding Article VII, India was not intending to negotiate MRAs, which he emphasized was a bilateral exercise, but instead was looking toward the negotiation of multilateral guidelines to help in the establishment of MRAs. Regarding New Zealand's suggestion of presentations by Members on their domestic processes for assessment, he agreed they would be very useful.

59. The representative of Hong Kong, China observed there were two guidelines for recognition. The first concerned Article VI:6, and was the original WPPS mandate for establishing guidelines for the recognition of qualifications contained in paragraph 2(c) of the Ministerial *Decision on Professional Services*. The second was the possibility, as mentioned by India, of developing multilateral guidelines to help assist in the negotiation of MRAs falling under Article VII. In Hong Kong China's view, the separation between the two guidelines was very clear. He also noted the clarification that India was considering the options as parallel processes.

60. The Chairperson noted that Members had a more focused discussion in terms of certain issues related to recognition. There had been a very useful suggestion for a "show and tell" exercise, and he wondered if New Zealand would take the initiative at a subsequent meeting, but first he wished to have any further comments by delegations on New Zealand's suggestion.

61. The representative of the United States noted that her delegation had previously circulated a paper on U.S. practices on mutual recognition (as document S/WPDR/W/23 dated 10 March 2003). She reiterated earlier U.S. comments that they saw the relevance to Articles VI:4 and VII to be with respect to governmental entities. In the U. S. case, mutual recognition was being undertaken by private rather than governmental entities, although she recognized that India had raised questions on the delegation of governmental authority in that regard. Her delegation was still looking at India's paper, and would need to come back later to the issues of cross-linkages between Articles and of commitments under Article XVIII.

62. The representative of New Zealand stated that her delegation would be happy to make a brief presentation at the next WPDR session, possibly by taking a specific profession as an example.

63. The representative of Thailand noted that the annex to India's paper did not contain additional information, and that her delegation had contributed some of the examples. Non-recognition of qualification was a major barrier to Thai exporters under Mode 4, and New Zealand's suggestion was a good initiative. Thailand would search for more examples, and she hoped that the issue would be kept on the agenda of the Working Party.

64. The representative of the United States clarified that her delegation's interest was to be more informative about U.S. practices, and to remind Members that her delegation saw the issues as falling between governments. She was not sure what the U.S. participation would be if there were an intention to create rules or procedures for non-governmental entities. The United States was not agreeing to establish procedures in the WPDR on mutual recognition, but was simply trying to be constructive. The U.S. representative welcomed New Zealand's suggestion, and the offer to make a presentation at the next meeting.

65. The Chairperson concluded by suggesting that Members take note of the statements made, being mindful that delegations had a more focused discussion in terms of the relationships between Articles VI:4, VI:6 and VII. He also noted the distinction made between the issue of recognition and the possible ways of addressing recognition, and observed that India's paper addressed that distinction. Members were continuing to reflect on the issues, and therefore there appeared to be value-added in keeping the item on the agenda. Members accepted the Chairperson's suggestion.

Consultations in Professional Services

66. The Chairperson then moved to the Secretariat paper, *Synthesis of Results to Date of the Domestic Consultations in Professional Services*, the latest version of which had been circulated as JOB/(02)/204/Rev.1, dated 21 February 2003. He also asked if any Member wished to update the Working Party on the status of their domestic consultations. No further comments were received. The Chairperson proposed to retain the agenda item, with a view to allowing delegation to offer further updates on the status of their domestic consultations. Members agreed to the Chairperson's suggestion.

67. The Chairperson then turned to the Secretariat consultations with international professional organizations, noting that, at the previous meeting, the Secretariat had presented a compilation of the comments received to date, titled *Results of Secretariat Consultations with International Professional Services Associations*. A revised version was subsequently circulated, as JOB(03)/126 /Rev.1, dated 22 September 2003. The Chairperson asked the Secretariat to introduce the revised paper.

68. The Secretariat noted that the only addition to the paper was on page 3, incorporating the response from the Latin Body of Notaries. In their view, the notarial function was a State function, and it was not possible to include notaries in the structure foreseen in the *Accountancy Disciplines*. The Secretariat would, however, seek clarification about any trade which might be taking place, and contact those organizations which had not yet responded or had given preliminary responses.

69. The representative of Thailand enquired as to the status of the *Synthesis of Results to Date of the Domestic Consultations in Professional Services*, stating that, although it was an ongoing exercise, some kind of conclusion should be drawn. On the consultations with international professional organizations, under legal services, she noted that the IBA had responded with a draft discussion paper, and asked if that could be made available to Members. The representative also supported Japan's earlier comment that it would be useful to make an inquiry to the international professional organizations regarding the current status of their work on international standards.

70. The representative of Japan confirmed that his delegation had proposed making an inquiry to international professional organizations regarding the current status of establishing international standards in each sector, and said a new questionnaire could be sent. As to the Secretariat consultations, he was pleased to see the positive reactions by international professional bodies concerning the application of the *Accountancy Disciplines* to other sectors. Taking note of the concern raised by the notary association, he emphasized that services supplied in the exercise of governmental authority fell outside the scope of the GATS. He also pointed out that some comments made by international professional associations were already reflected in Japan's proposed Annex, for example in para 13 regarding exceptions to public comment procedures in cases of emergency which had been suggested by the International Union of Architects.

71. The representative of Columbia noted an error in the Spanish version of the Secretariat compilation regarding the new inclusion, and asked if it could be corrected.

72. The Chairperson stated that Colombia's point would be addressed. Responding to Thailand's first question, he recalled that Members had said they would attempt a overview on the basis of the responses received, without prejudice to any final summation once the domestic consultations were concluded. No such summation had yet been attempted, and he took note of Thailand's point that some kind of conclusion should be drawn. Regarding an inquiry on international standards, he asked the Secretariat to comment on the letters sent to the international professional organizations.

73. A representative of the Secretariat replied that the letter sent to international organizations, as approved by Members and contained in JOB(02)/139/Rev.2 (dated 25 October 2002), did state "It would also be greatly appreciated if you were to include in your response any information concerning your organization's activities in regard to international regulatory issues". That would include activities in regard to international standards. In fact, some responses had already been received, for example the inclusion of the model MRA and model disciplinary agreement in the reply by the International Actuarial Association on page 3 of the Secretariat compilation. The agreements were available from the Secretariat if Members wished.

74. The representative of Thailand thanked Japan, the Chairperson and the Secretariat for their clarifications. In regard to domestic consultations, she said that Members should not hastily to draw conclusions, considering the small number of responses. She encouraged other Members to report on their consultations, and emphasized that it would not be useful if no conclusions were drawn.

75. The Chairperson emphasized that any interim summation would not prejudice any later responses, including those possibly received from other international organizations domiciled in developing countries. He suggested that the WPDR attempt an interim summation at the next meeting. The Chairperson then concluded by suggesting that Members take note of the statements made, and that the WPDR revert to the agenda item at the next meeting. Members accepted the Chairperson's suggestion.

B. ORGANIZATION OF THE WPDR SEMINAR

76. The Chairperson noted that the next item on the agenda was the organization of the seminar on domestic regulation. At the previous meeting, Members had discussed a revised Outline for the seminar, circulated as JOB(03)/35/Rev.2, dated 30 June 2003. Since the July WPDR meeting, financing had become available for a seminar on 8-9 December,² and a fax had been sent to delegations asking if there were any objections to those dates. No objections were received. The Chairperson then suggested that Members discuss the details of the financing in informal mode. Upon returning to formal mode, he then opened the floor for comments by Members, noting that the

² The seminar was subsequently postponed until 2004 due to a lack of available hotel rooms.

Secretariat was contacting potential speakers, and that recommendations from delegations were welcome.

77. The delegation of Canada thanked the Secretariat for the efforts to obtain funding.

78. The delegation of Indonesia also appreciated the Secretariat's efforts, especially to ensure the participation of developing countries. Regarding the substance of Session III, concerning the applicability of the *Accountancy Disciplines* to other professional services, he asked whether the Secretariat would invite other international organizations, especially those which had been consulted, and if it was possible for them to make presentations.

79. The delegation of Columbia thanked donors for the funding, and hoped that all developing countries would be able to send a participant.

80. The Chairperson, responding to Indonesia's question, said that his understanding was that outside speakers would be limited to experts from UNCTAD and the OECD. The selection of other outside speakers would require the agreement of Members. At the same time, he assumed that other external participants would have the opportunity to participate from the floor, and invited the Secretariat to give its views.

81. A representative of the Secretariat said that the practice that had been followed to date was that speakers from relevant intergovernmental organizations were invited, as well as speakers from the private sector. If Members wished to invite speakers from NGOs, that could also be done as had occurred in the past. Essentially it was up to Members to decide. The Secretariat could explore if international professional organizations were able to make relevant presentations if Members so wished. The Chairperson noted that invitations for UNCTAD and the OECD had already been sent.

82. The delegation of the United States enquired about the time that would be allotted in the programme for the regulators that participated. The Chairperson said that the programme was flexible and the workshop could be either 1 ½ or 2 days, depending on the level of participation.

83. The delegation of Thailand asked about any limits on the number of participants, noting that regulators could come from many different sectors. The Chairperson replied that there was no limit on the number of participants which Members might wish to bring, but there would be a limit on the number of funded participants.

84. The delegation of Canada stated that the more regulators which participated, the better. Members could maximize participation by planning a full two-day meeting, as well as by thinking creatively about the programme format, perhaps including as many informal discussions as possible.

85. The Chairperson concluded by suggesting that Members take note of the comments made. Members accepted the Chairperson's suggestion.

C. DATE OF NEXT MEETING

86. The Chairperson noted that the last item on the agenda was the date for the next meeting. As discussed under the previous agenda item, the CTS would need to confirm the meeting dates of the seminar on domestic regulation. With that understanding, he suggested that the next meeting be held just after the seminar.³

³ The seminar was subsequently postponed until 2004 due to a lack of available hotel rooms.

87. The delegation of the United States asked the Secretariat about the nature of the other meetings to be held in December, noting that subsidiary body meetings in the second week of the services cluster created some difficulties for those travelling to participate in bilateral negotiations.

88. The Secretariat replied that so far Members had been following a steady pattern, in principle, of holding subsidiary body meetings during the first week of the services cluster. Members had departed from that pattern in specific situations, for example in regard to financial services, and it could be done again in order to permit the next WPDR meeting to be held following the seminar.

89. The Chairperson then thanked Members for their participation, and suggested to conclude the meeting. Members approved the Chairperson's suggestion.
