

# WORLD TRADE ORGANIZATION

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**Working Party on Professional Services**

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## COMMUNICATION FROM AUSTRALIA

### Disciplines for Licensing Requirements and Procedures: Accountancy Sector

The following communication has been received from the delegation of Australia with the request that it be circulated for consideration by Members at the meeting to be held on 24 July 1997.

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The aim of this proposal is to move forward on the mandate of the Singapore Ministerial Declaration to develop multilateral disciplines in relation to accountancy.

This proposal draws on the proposals for disciplines for licensing requirements and procedures from the EU; Brazil, Chile, Colombia and Mexico; the US; and IFAC; and draws from papers submitted by the WTO Secretariat. They are:

- Note on draft disciplines for the accountancy sector submitted by the European Communities and their Member States, S/WPPS/W/17;
- Communication from Brazil, Chile, Colombia and Mexico, S/WPPS/W/16;
- Elements To Be Addressed in Developing Disciplines For Professional Services: Accountancy Sector: Implementing GATS Article VI.4, United States, S/WPPS/W/15;
- Letter from IFAC, to the Chair of the Working Party on Professional Services, on domestic licensing requirements and procedures, dated 13 May 1997;
- Note by the WTO Secretariat, Synthesis of Responses to Questionnaire on Accountancy, S/WPPS/W/11;
- Note by the WTO Secretariat, The Relevance of the Disciplines of the Agreements on Technical Barriers to Trade and Import Licensing Procedures to Article VI.4 of the General Agreement on Trade in Services, S/WPPS/W/9;

The proposal is consistent with the mandate in GATS Article VI.4 that the Council for Trade in Services shall, through appropriate bodies it may establish, (i.e. the Working Party on Professional Services), develop any necessary disciplines. As such, the Council for Trade in Services has the authority to decide on disciplines on licensing requirements and procedures as a legal instrument attached to the GATS. These disciplines would apply to all GATS members in relation to the accountancy sector.

LICENSING REQUIREMENTS AND PROCEDURES  
IN ACCOUNTANCY: DISCIPLINES

1. SCOPE

The disciplines set out below apply to licensing requirements and procedures in the provision of accountancy services. In accordance with Article VI.4 of the GATS:

*"Such disciplines shall aim to ensure that such requirements are, inter alia:*

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;*
- (b) not more burdensome than necessary to ensure the quality of the service;*
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service."*

2. DEFINITIONS

- (a) A licence is the right to practice prescribed regulated accountancy services.
- (b) A licensee is the person or firm with the right to practice prescribed regulated accountancy services, has met the requirements in relation to qualifications and other licensing criteria, and has agreed to comply with the licensing authority's regulations.
- (c) Licensing covers the scope of practice, qualifications and other requirements for an individual or a firm.
- (d) Scope of practice includes regulated activities such as accounting, auditing, bookkeeping and taxation services as set out in the Uruguay Round, MTN.GNS/W/120 and also insolvency and liquidation.
- (e) Licensing requirements<sup>1</sup> are the requirements which individuals and firms have to comply with in order to obtain a licence or any other form of authorisation to practice certain regulated activities in the territory of the Member. They currently generally cover:
  - qualifications requirements which include education, examinations, practical training, experience and language skills;
  - other licensing requirements including, legal form of commercial presence; nationality; citizenship; residence; membership of a professional association; bonding; liability insurance; evidence of good character and financial standing; mandatory audits by government agencies; prohibitions on the use of international firm name; work permits; visas; employee quotas; absolute limits on foreign accountants, and discretionary criteria.

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<sup>1</sup>Document S/WPPS/W/2 contains a list of possible general and specific restrictions on trade in accountancy services. Some of the general measures are subject to disciplines under the GATS. A number of specific measures are also dealt with in some articles of the GATS (e.g. those relating to nationality), while others are applied on a non-discriminatory basis as part of the regulatory frameworks and are aimed at achieving general policy objectives.

- (f) Licensing procedures include the administrative forms and processes which lead to the issuing of a licence by the licensing authority.

### 3. LICENSING REQUIREMENTS AND PROCEDURES

#### A. General provision of information: transparency

##### 3.1. Members shall publish, including through the web site, journals and brochures:

- (a) licensing procedures and details of the licensing authority, whether the agent of the government or the regulatory professional association or a special ad hoc agency;
- (b) the scope of the regulated accountancy activities for which the licence is granted, whether to an individual or a firm;
- (c) the scope of the non-regulated accountancy activities which unlicensed/uncertified accountants can perform;
- (d) the title a licensee is entitled to use;
- (e) the conditions for granting a licence, identifying all requirements together with their rationale;
- (f) the obligations of licensees;
- (g) the monitoring arrangements for compliance;
- (h) through licensing authorities, an updated list of all licensed individuals and firms;
- (i) nationally, any proposed introduction of new requirements or amendments in advance, ensuring adequate time for any comments to be submitted by interested parties;
- (j) any such changes and amendments.

##### 3.2. Members shall advise the WTO where Members can obtain the details set out in Section 3.1.

#### B. Qualifications requirements and procedures

##### Transparency

##### 3.3. Members shall on qualifications requirements and procedures ensure that:

- (a) qualification requirements are clear and that details of them are publicly available so that foreign applicants can familiarise themselves with the details;
- (b) the relevant authorities make information publicly available explaining where and how foreign applicants can obtain the necessary qualifications.
- (c) procedures to verify qualifications, competence and ability of professionals of any other Member are publicly available;

- (d) the applicant is informed of the decision relating to the application within a reasonable time after receipt and at the latest three months.

3.4. Members shall notify the WTO of Section 3.3 (a), (b) and (c).

Objectivity

3.5. Members shall ensure:

- (a) qualifications requirements are non-discriminatory in application and administered in a fair and equitable manner;
- (b) to the maximum extent possible, foreign applicants are subject to the same examinations as domestic applicants, or where different examinations are used, the overall degree of difficulty is not greater for foreign applicants than for domestic applicants;
- (c) qualification requirements are not limited to host country or university or institution;
- (d) levels of minimum requirements for entry into the accountancy profession in Member countries are established on the basis of comparability of education and experience acquired in other countries in terms of content and amount, and relevance of functions performed;
- (e) mutual recognition agreements of professional qualifications are promoted;
- (f) optional assessment procedures, by Members, are allowed, such as competency based assessment, which are designed to establish the same level of competence as for domestic applicants.

Not be more burdensome than necessary

3.6. Members shall ensure:

- (a) any additional or different procedures in relation to qualification requirements of foreign applicants avoid establishing conditions or preconditions that clearly cannot be met by foreign applicants so as to preclude successful completion of applications;
  - (i) reasonable pathways, such as distance education, should be made available to foreign applicants required to undertake additional courses or subjects.
- (b) citizenship and residency is not required for sitting examinations:
  - (i) foreign applicants with extensive experience, equivalent to host country, should not be required to obtain long periods of in-country experience before being permitted to sit for examinations.

C. Other licensing requirements

Transparency

3.7. Members shall on other licensing requirements:

- (a) specify all other criteria applied in granting a licence:
  - (i) identify the criteria to protect the consumer;
  - (ii) specify the purpose of each of the remaining criteria.<sup>2</sup>

Objectivity

3.8. Members shall ensure:

- (a) other requirements are non-discriminatory in application and administered in a fair and equitably manner;
- (b) host and home country authorities consult so as to clarify the nature of their authority to act on consumer protection requirements, other than residency. The clarification to include the following issues:
  - (i) home country regulator or professional association confirming non-resident's address or applicant's standing or its ability to take action against applicant for malpractice in host country;
  - (ii) non-resident licensee carrying the same level of professional indemnity insurance as that of host country licensees or posting a commensurate bond;
  - (iii) non-resident being subject to host country quality control requirements;
- (c) there are no discretionary or discriminatory elements in eligibility criteria for a licence, such as:
  - (i) a nationality/citizenship requirement as it imposes a precondition on the foreign supplier which is not related to the supply of the service; such a requirement amounts to a discrimination against foreign suppliers and is subject to market access and national treatment provisions of GATS Articles XVI and XVII respectively;
  - (ii) the application being subject to discretionary approval.

Not be more burdensome than necessary

3.9. Members shall on other licensing requirements ensure:

- (a) requirements on legal form of commercial presence shall be non-discriminatory in respect of the full range of structures such as company, including branches and subsidiaries; partnership; joint venture; and profit sharing arrangements;
- (b) requirements on control and ownership of firms are justified on public interest grounds to protect the independence, objectivity and integrity of the licensee;

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<sup>2</sup>Despite a foreign applicant fulfilling the qualifications requirements and meeting the requirements of the regulations in relation to legitimate policy objectives, such as consumer protection, it does not follow automatically that the applicant is granted a licence to practice as there may also be, for example, a discretionary element.

- (c) the same requirements apply on professional firms, that is, on shareholders, partners or managers as imposed on individuals;
- (d) use of firm name is allowed;
- (e) employment of foreign accountants is not subject to absolute limits;
- (f) the range of accounting activities afforded by a licence is not restricted beyond the licence.

D. Licensing procedures

Transparency

4.0. Members shall ensure:

- (a) receipt of application is acknowledged promptly, and the result of the application is conveyed to the applicant within a reasonable time and no later than three months;
- (b) rejection of an application, by the licensing authority, must include a clear statement of the reasons for the rejection.

Objectivity

4.1. Members shall ensure:

- (a) procedures are non-discriminatory in application and administered in a fair and equitable manner;
- (b) the licensing authority informs an applicant when it undertakes action to verify information supplied by the applicant;
- (c) the licensing authority handles applications in the strictest confidence, but this is not to preclude making enquiries.

Not be more burdensome than necessary

4.2. Members shall ensure:

- (a) procedures are as simple and straightforward as possible:
  - (i) verification of documentation from applicants should not involve original documents or copies that require costly or time-consuming authentication;
  - (ii) licensing authorities do not establish onerous conditions or preconditions that would prevent successful completion by applicants;
  - (iii) examinations are to be held regularly, at least once a year;

- (b) applications are made to only one licensing authority for a particular service in the one jurisdiction;
  - (i) however, this could be implemented by a number of agencies;
- (c) where licensing authorities charge a fee, it is based on administrative costs of the licensing procedure.

Not be a restriction on the supply of the service

4.3. Members shall ensure:

- (a) an individual or firm is free, within reason, to resubmit applications for licensing;
- (b) membership of a particular professional association or other group is not required of applicants;
- (c) a licence, once granted, can be put into effect immediately, and is not subject to additional constraints such as excessively restrictive visas.

E. Licensing appeals

4.4. Each Member, whose national legislation contains provisions on licensing measures, shall:

- (a) maintain judicial, arbitral or administrative tribunals of procedures for the purpose, *inter alia*, of the prompt review of administrative actions to the final determinations and reviews of determinations on licensing;
- (b) ensure such tribunals or procedures are independent of the authorities responsible for the determination or review of licensing;
- (c) specify the appeals body;
- (d) publish details of procedures in lodging an appeal;
- (e) ensure that the time limit between lodging an appeal and the result of an appeal is within a reasonable time and no later than six months.