

COMMUNICATION FROM JAPAN

Draft Annex on Domestic Regulation

Revision

Please note that the following changes should be made to WTO document JOB(03)/45.

For the convenience of delegations, a complete copy of the draft Annex reflecting the changes is attached to this document.

1. Page 2, fifth line of Paragraph 7 of "BASIC OUTLINE OF A DRAFT ANNEX ON DOMESTIC REGULATION": In the last part of this paragraph, reference should be made to "Annex on Movement of Natural Persons, 4", instead of "Annex on Movement of Natural Persons, 2".
2. Page 5, Footnote 10: "Paragraph 3 of Article III of GATS" should be deleted.
3. Page 5, Footnote 13: Footnote 13 should make reference to "Paragraph 8", instead of "Paragraph 14".
4. Page 6, Paragraph 22": other than qualification requirements," should be deleted.

Working Party on Domestic Regulation

COMMUNICATION FROM JAPAN

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The following communication has been received from the delegation of Japan with the request that it be circulated to the Members of the Working Party on Domestic Regulation.

BASIC OUTLINE OF A DRAFT ANNEX ON DOMESTIC REGULATION

PROPOSED BY JAPAN

Following the work of the Secretariat "Examples of measures to be addressed by disciplines under GATS Article VI:4 (JOB(02)20/Rev.3) and work at WPDR, to inspire the discussions within the WP, Japan presents the attached draft "Annex on Domestic Regulation". Japan reserves the right to revise and/or supplement its proposal according to the results of further examinations. The main elements of our proposal for a draft Annex on Domestic Regulation are summarized as follows.

1. New disciplines to be formulated in accordance with GATS Article VI: 4 could take the form of an Annex on Domestic Regulation and thus constitute an integral part of the GATS.
2. The scope of the measures covered by this Annex should be clearly defined. The core part of the Annex is to be applied to "Measures by Members relating to licensing requirements and procedures, qualification requirements and procedures as well as technical standards." Measures by Members should include measures taken by regional or local governments as well as non-governmental bodies as stipulated in paragraph 3 of Article 1 of GATS.
3. Taking into account the specific characteristics of each service sector, the possibility of developing separate, additional or alternative disciplines for a specific sector should not be eliminated. (See subparagraph (8) below.)
4. The core part of the Annex on Domestic Regulation is drawn from paragraphs 2,3, 4, 5, 6, 7, 8, 9, 13, 15, 16, 17, 18, 20, 22, 23, 24, 25 of the Accountancy Disciplines, with some additional elements, and is intended to apply only to sectors or sub-sectors where specific commitments are undertaken by each Member.

5. In addition, the following elements regarding "transparency" and "procedures of judicial tribunals" are established in order to supplement GATS Articles III and VI: 2. These disciplines are to apply, in principle, to all service sectors in line with the coverage of GATS Articles III and VI: 2.

(a) Disciplines on "transparency" include i) obligations to publish any laws and regulations affecting trade in services in an official journal or on the Internet, and ii) an endeavour-clause for prior comment procedures. Taking into account the capacity of many WTO Members, coverage of the endeavour-clause on prior comment procedures should be limited to administrative regulations by a central government in the committed sectors.

(b) A discipline on "procedures of judicial tribunals" stipulates that such procedures be made public.

6. A general provision on the "necessity" principle, similar to that of paragraph 2 of the Accountancy Discipline, is included (i.e. all measures covered by the Annex should not be more burdensome than necessary to fulfil a national policy objective).

7. It should be noted that services supplied by the exercise of governmental authority fall outside the scope of the GATS. It should also be confirmed that the Annex on Domestic Regulation does not prevent Members from taking measures under : Article XII (Restriction to Safeguard the Balance of Payments), Article XIV (General Exceptions), Article XIV bis (Security Exceptions), as well as measures for prudential reasons (Annex on Financial Services, 2 (a)), measures to regulate the entry of natural persons into, or temporary stay in a Member's territory (Annex on Movement of Natural Persons, 4).

8. It should be carefully examined as to whether measures regulating the entry of natural persons are related to "licensing requirements and procedures, qualification requirements and procedures as well as technical standards", and thus shall be subject to the discipline of the Annex. Otherwise a separate alternative discipline should be elaborated for particular sector/mode.

DRAFT ANNEX ON DOMESTIC REGULATION

The following draft Annex on Domestic Regulation to the General Agreement on Trade in Services* is prepared by the Government of Japan in order to stimulate the discussions in the Working Party on Domestic Regulation (WPDR). The Government of Japan reserves the right to revise and/or supplement this draft according to the results of its further examinations.

*Footnotes to paragraphs are for reference by Members and do not constitute a part of the draft Annex.

I. OBJECTIVES

1. The purpose of this Annex is to facilitate trade in services by ensuring that measures relating to licensing requirements and procedures, qualifications requirements and procedures as well as technical standards do not constitute unnecessary barriers to trade in services, and that such requirements are, inter alia, based on objective and transparent criteria, such as competence and the ability to supply the service, in a manner not more burdensome than necessary to ensure the quality of the service, and in the case of licensing procedures, not in themselves a restriction on the supply of the service.¹
2. This Annex does not prejudice further development of any necessary disciplines for any specific sector.²

II. SCOPE AND DEFINITION

3. This Annex applies to measures affecting trade in services including those relating to licensing requirements and procedures, qualification requirements and procedures as well as technical standards.
4. This Annex does not apply to measures regulating the entry of natural persons into, or temporary stay in, a Member's territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders.³
5. For the purposes of this Annex:
 - (a) "measure" means any measure by a Member as defined in paragraph 3(a) of Article I of the Agreement;
 - (b) "licensing requirement" means substantive requirements, other than qualification requirements, with which a service supplier is required to comply in order to obtain formal permission to supply a service⁴;
 - (c) "licensing procedure" means administrative procedures relating to submission and processing of an application for a licence⁴;

¹ This provision is formulated based on the content of the paragraph 4 of Article VI of the GATS.

² These disciplines include "Disciplines on Domestic Regulation in the Accountancy Sector" (SL/64) dated 17 December 1998 (hereinafter referred to as "Accountancy Disciplines"). A possible legal form of Accountancy Disciplines can be discussed at a later stage, after reaching a general consensus on this draft Annex on Domestic Regulation.

³ However, this Annex will apply to licensing requirements and procedures as well as qualification requirements and procedures within the Member's territory which serve as a basis for measures regulating the entry of natural persons into, or temporary stay in, a Member's territory. As a substitute for this exclusion of measures provided for in paragraph 4, another disciplines should be developed so that such measures are not be undertaken in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment.

- (d) "qualification requirement" means substantive requirements that a professional service supplier is required to fulfil in order to obtain certification or a licence⁴;
- (e) "qualification procedure" means administrative or procedural rules relating to the administration of qualification requirements⁴; and
- (f) "technical standard" means either a mandatory or a voluntary standard which may apply both to the characteristic or definition of the services itself and to the manner in which it is performed.⁴

III. PREPARATION, ADOPTION AND APPLICATION OF MEASURES

6. Each Member shall ensure, in sectors where specific commitments are undertaken, that measures of general application relating to licensing requirements and procedures, qualification requirements and procedures as well as technical standards are not prepared, adopted or applied with a view to or with the effect of creating unnecessary barriers to trade in services. For this purpose, each Member shall ensure that such measures are not more burdensome than necessary in order to fulfil its national policy objectives.⁵

7. Each Member shall examine, in sectors where specific commitments are undertaken, the possibility of modifying or terminating existing measures of general application relating to licensing requirements and procedures, qualification requirements and procedures as well as technical standards, if the circumstances or objectives giving rise to their adoption no longer exist or if new circumstances or objectives can be addressed in a less trade-restrictive manner.⁶

IV. TRANSPARENCY

8. Each Member shall have or designate one or more official journals, publish on a regular basis any laws and regulations of general application affecting trade in services by official journals, which may be designated as such, or by publications on Internet⁷ and make their copies readily available to the public.

9. Each Member shall make publicly available, including through the enquiry and contact points established under Articles III and IV of the Agreement, the names and addresses of competent authorities responsible for the licensing or qualification affecting trade in services.⁸

10. A Member shall inform another Member, upon request, of the rationale behind domestic regulatory measures of general application affecting trade in services in relation to national policy objectives as referred to in paragraph 6.⁹

11. Each Member shall endeavour to provide specific information, upon request by an applicant, on measures of general application relating to licensing requirements and procedures or qualification requirements and procedures (such

⁴ Definitions for licensing requirements, licensing procedures, qualification requirements, qualification procedures, and technical standards are based on the definitions in the Secretariat background paper (S/WPPS/W/9, 11 September 1996).

⁵ Paragraph 2 of Accountancy Disciplines. In spite of the intensive discussions in the Working Party on Domestic Regulation during past several years, any concrete definition of "a legitimate objective" has not yet been agreed upon. Against this background, The Government of Japan prefers to take up a wording of "national policy objectives" from the preamble of the GATS.

⁶ Paragraph 23 of the TBT Agreement.

⁷ Paragraph 1 (a) and (b) of Leaders' Statement to Implement APEC Transparency Standards (27 October 2002).

⁸ Paragraph 3 of Accountancy Disciplines.

⁹ Paragraph 5 of Accountancy Disciplines.

information includes terms of validity and conditions for a license or a qualification, a list of documents required in licensing procedures or qualification procedures and, where possible, examination criteria).¹⁰

12. When introducing, or changing any measures of general application that significantly affect trade in services, each Member shall endeavour to allow, except in emergency situations, a reasonable interval between their publication and entry into force.¹¹

PUBLIC COMMENT PROCEDURES

13. In sectors where specific commitments are undertaken, a central government of each Member shall, to the extent possible, take appropriate legal, administrative or other measures to public comment procedures specified below, except in cases of emergency or where they are of a purely minor nature:

- (i) To publish in advance regulations of general application which affect trade in services, when formulating, amending, or repealing them by the central government;
- (ii) to provide an opportunity for comments by the public and give consideration to such comments, before adoption,¹² and;
- (iii) to publish to the public the comments submitted through the procedure referred to in this paragraph and properly compiled, and the central government's views on such comments.

V. LICENSING REQUIREMENTS

14. In sectors where specific commitments are undertaken, each Member shall pre-establish and make publicly available licensing requirements (i.e. the substantive requirements, other than qualification requirements, to be satisfied in order to obtain or renew an authorization to practice), except when deemed rational in view of the purpose and the nature of the measure.¹³

15. Where residency requirements for licensing not subject to scheduling under Article XVII of the Agreement exist, in sectors where specific commitments are undertaken, each Member shall consider, whether less trade restrictive means could be employed to achieve the purposes for which these requirements were imposed, taking into account costs and local conditions.¹⁴

16. In sectors where specific commitments are undertaken, each Member shall ensure that licensing fees charged by the competent authorities have regard to the administrative costs involved, and do not in themselves represent an impediment to

¹⁰Paragraph 3 of Leaders' Statement to Implement APEC Transparency Standards (27 October 2002). This provision intends to enhance transparency for a service supplier responding to obstacles to trade in services as registered in the Secretariat paper "Examples of Measures to be addressed by Disciplines under GATS Article VI:4 (JOB(02)/20/Rev.2)".

¹¹Paragraph 2.12 of the TBT Agreement. This provision intends to prevent regulatory changes without adequate prior notice, which constitute obstacles to trade in service as registered in the Secretariat paper "Examples of Measures to be addressed by Disciplines under GATS Article VI:4 (JOB(02)/20/Rev.2)".

¹²Paragraph 6 of Accountancy Disciplines.

¹³Paragraph 8 of Accountancy Disciplines.

¹⁴Paragraph 9 of Accountancy Disciplines.

practising the relevant activity. This shall not preclude the recovery of any additional costs of verification of information, processing and examinations.¹⁵

VI. LICENSING PROCEDURES

17. In sectors where specific commitments are undertaken, each Member shall endeavour to provide, upon request by an applicant, information on licensing procedures (i.e. the procedures to be followed for the submission and processing of an application for an authorization to practise).¹⁶

18. In sectors where specific commitments are undertaken, each Member shall ensure that application procedures and the related documentation are not more burdensome than necessary to ensure that applicants fulfil qualification and licensing requirements. Each Member shall endeavour not to require more documents than are strictly necessary for the purpose of such licensing, and shall endeavour not to impose unreasonable requirements regarding the format of such documentation. Where minor errors are made in the completion of such applications, each Member shall accord to applicants, where appropriate, the opportunity to correct them.¹⁷

19. In sectors where specific commitments are undertaken, each Member shall endeavour to establish a standard processing time-frame for an administrative decision on an application for a license after receiving the application in question.¹⁸

20. In sectors where specific commitments are undertaken, each Member shall inform an unsuccessful applicant, on request, of the reasons for rejection of the application. In such cases, each Member shall permit an applicant, within reasonable limits, to resubmit applications for licensing.¹⁹

21. In sectors where specific commitments are undertaken, each Member shall ensure that a licence, once granted, enters into effect immediately, in accordance with the terms and conditions specified therein.²⁰

VII. QUALIFICATION REQUIREMENTS

22. In sectors where specific commitments are undertaken, each Member shall pre-establish and make publicly available qualification requirements (i.e. the substantive requirements to be satisfied in order to obtain or renew an authorization to practice), except when deemed rational in view of the purpose and the characteristics of the requirements.

23. In sectors where specific commitments are undertaken, each Member shall ensure that the scope of examinations and of any other qualification requirements is limited to subjects relevant to the activities for which authorization is sought. Qualification requirements may include education, examinations, practical training, experience and language skills.²¹

¹⁵ Paragraph 13 of Accountancy Disciplines.

¹⁶ Paragraph 4 of Accountancy Disciplines.

¹⁷ Paragraph 15 of Accountancy Disciplines.

¹⁸ Paragraph 16 of Accountancy Disciplines.

¹⁹ Paragraph 17 of Accountancy Disciplines.

²⁰ Paragraph 18 of Accountancy Disciplines.

²¹ Paragraph 20 of Accountancy Disciplines.

VIII. QUALIFICATION PROCEDURES

24. In sectors where specific commitments are undertaken, each Member shall endeavour to provide, on request of an applicant, information on qualification procedures.²²
25. In sectors where specific commitments are undertaken, each Member shall ensure that examinations are scheduled at reasonably frequent intervals and open for all eligible applicants, including foreign and foreign-qualified applicants and that fees charged by the competent authorities have regard to the administrative costs involved, and do not represent an impediment in themselves to practising the relevant activity. This shall not preclude the recovery of any additional costs of verification of information, processing and examinations.²³
26. In sectors where specific commitments are undertaken, each Member shall ensure that verification of an applicant's qualifications acquired in the territory of another Member takes place within a reasonable time-frame.²⁴
27. In sectors where specific commitments are undertaken, each Member shall ensure that residency requirements for qualification not subject to scheduling under Article XVII of the Agreement are not required for sitting examinations.²⁵

IX. TECHNICAL STANDARDS

28. In sectors where specific commitments are undertaken, each Member shall ensure that measures relating to technical standards are prepared, adopted and applied only to fulfil national policy objectives including protection of consumers and establishment of minimal standards to ensure the quality of the service.²⁶
29. In sectors where specific commitments are undertaken, each Member shall ensure that laws and regulations on technical standards and other technical standards established by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities are pre-established and publicly available.²⁷

X. ADVERSE ADMINISTRATIVE DISPOSITIONS RELATING TO LICENCES AND QUALIFICATIONS²⁸

30. In sectors where specific commitments are undertaken, each Member shall endeavour to establish and make publicly available criteria for deciding upon administrative dispositions relating to licences and qualifications, which directly and adversely affect service suppliers who have acquired and exercise their licences or qualifications. Adverse administrative dispositions relating to licences and qualifications include withdrawal of licenses and deprivation of qualifications.
31. In sectors where specific commitments are undertaken, each Member shall, when deciding upon adverse administrative dispositions relating to licences or qualifications, endeavour to provide the opportunity for hearing to the service suppliers subject to such adverse administrative dispositions. Each Member shall provide an opportunity for such service suppliers to present documentary or material evidence.

²² Paragraph 4 of Accountancy Disciplines.

²³ Paragraph 23 of Accountancy Disciplines.

²⁴ Paragraph 22 of Accountancy Disciplines.

²⁵ Paragraph 24 of Accountancy Disciplines.

²⁶ Paragraph 25 of Accountancy Disciplines.

²⁷ Paragraph 4 of Accountancy Disciplines.

²⁸ This provision intends to enhance transparency and predictability by establishing concrete standards and procedure for adverse administrative dispositions.

XI. ADMINISTRATIVE GUIDANCE RELATING TO LICENCES AND QUALIFICATIONS²⁹

32. In sectors where specific commitments are undertaken, where a competent authority of a Member renders administrative guidance relating to a licence or a qualification of a service supplier, in order to pursue its administrative objectives, the Member shall ensure that the administrative guidance does not exceed the scope of the competence of the authority and is realized only through the voluntary cooperation of the service supplier concerned. Administrative guidance means guidance, recommendations and advice by administrative bodies to service suppliers to do or refrain from doing any act without imposing obligations on or limiting the rights of such service suppliers.

33. In sectors where specific commitments are undertaken, when a competent authority of a Member renders administrative guidance, the Member shall ensure that its competent authority does not treat the service supplier unfavourably solely on account of non-compliance of such service supplier with such administrative guidance, except when deemed rational in view of its purpose and characteristic.

34. In sectors where specific commitments are undertaken, where a competent authority of a Member orally renders administrative guidance to a service supplier, the Member shall ensure that its competent authority provides to the service supplier, upon its request, the purposes and contents of the administrative guidance in writing, except where such a requirement hampers the smooth operation of the competent authority's administration.

XII. PROCEDURE OF JUDICIAL TRIBUNALS

35. Each Member shall ensure that details of procedures of judicial tribunals for the review of administrative decisions, as provided for by paragraph 2 of Article VI of the Agreement, are made publicly available³⁰.

XIII. ADMINISTRATION

36. Any Member may notify the Council for Trade in Services of any measure taken by any other Member, which the notifying Member considers affects the operation of this Annex.

37. The Council for Trade in Services may, at a request of a Member, take up any issues relating to the operation of this Annex.

XIV. MISCELLANEOUS PROVISIONS

38. Nothing in this Annex shall be construed as to prevent any Member from taking measures pursuant to Articles XII, XIV or XIV bis of the Agreement, or paragraph 2 of the Annex on Financial Services

²⁹This provision intends to prevent abuse of administrative discretionary power so that consistent administrative practise based on a clear rule will be realized.

³⁰Paragraph 2 of Article VI of the GATS. Paragraph 7 of Accountancy Disciplines.

COVERAGE OF DRAFT ANNEX ON DOMESTIC REGULATIONS ACCORDING TO EACH DISCIPLINE

Sectors	Measures affecting trade in services (Article I.1 of GATS)			
	In sectors where specific commitments are undertaken		In sectors where specific commitments are not undertaken	
	Measures relating to qualification requirements and procedures, technical standards and licensing requirements	Other measures	Measures relating to qualification requirements and procedures, technical standards and licensing requirements	Other measures
Disciplines				
Preparation, adoption, and application of measures (paragraph 6,7)	Applied	Not applied	Not applied	Not applied
Transparency (paragraphs 8-10,12) (GATS III.1)	Applied (paragraph 8 is applied to laws and regulations)	Applied (paragraph 8 is applied to laws and regulations)	Applied (paragraph 8 is applied to laws and regulations)	Applied (paragraph 8 is applied to laws and regulations)
Paragraph 11	Applied	Not Applied	Applied	Not Applied
Public comments procedures (paragraphs 13)	Applied to regulations formulated by central governments	Not applied	Not applied	Not applied
Licensing requirements (paragraphs 14-16)	Applied	Not applied	Not applied	Not applied
Licensing procedures (paragraphs 17-21)	Applied	Not applied	Not applied	Not applied
Qualification requirements (paragraphs 22,23)	Applied	Not applied	Not applied	Not applied
Qualification procedures (paragraphs 24-27)	Applied	Not applied	Not applied	Not applied
Technical standards (paragraphs 28,29)	Applied	Not applied	Not applied	Not applied
Adverse administrative dispositions (paragraphs 30,31)	Applied	Not applied	Not applied	Not applied
Administrative guidance (paragraphs 32-34)	Applied	Not applied	Not applied	Not applied
Procedure of judicial tribunals (paragraph 35) (GATS VI.2)	Applied	Applied	Applied	Applied