

COMMUNICATION FROM THE UNITED STATES

Accounting Services

The attached communication has been received from the delegation of the United States with the request that it be circulated to Members of the Council for Trade in Services.

I. INTRODUCTION

1. The United States presents this proposal on accounting services for consideration of all WTO Members. It is intended to stimulate discussion and liberalization of this important sector in the world economy.

II. IMPORTANCE OF ACCOUNTING SERVICES

2. In several respects, accounting is the most international profession. Globalization of business has increased the demand for accounting services. As multinational clients expanded their operations worldwide, the large accounting firms followed them to foreign locations to provide full service. The complexity of commercial transactions (including international mergers and acquisitions), the preparation of financial reports for getting listed on regional stock exchanges, and preparation of company tax reports requires skilled accounting services for smooth, efficient, cost-effective business operation. The world's two million accountants are employed not only by accounting firms, but by manufacturers, other service firms, and non-profit organizations in various activities, ranging from bookkeeping to auditing to preparation of taxes. As noted above, international accounting firms are engaged in a variety of activities. In addition to auditing, these include: management consulting, computer and information technology, advice on mergers and acquisitions, and tax preparation. Worldwide gross revenues of the top 10 U.S. accounting firms alone exceed \$50 billion annually.

III. PURPOSE

3. The purpose of this proposal is to make it easier for accountants and accounting firms to provide services to clients involved in international transactions, enabling those clients to conduct business successfully and with confidence that they are operating in compliance with applicable laws and regulations, thereby contributing to economic and social progress worldwide.

4. Accountants often encounter difficulties becoming licensed or certified in other countries or in establishing business operations to provide service to clients in foreign countries.

IV. SECTOR COVERAGE

5. Accountancy is generally defined in the WTO context to include accounting, auditing, and bookkeeping services.

V. PROPOSAL

6. This proposal is not presented as a legal text, but rather as a list of obstacles identified in reviewing this service sector. Some items on the list may be market access restrictions, or national treatment limitations, or both. In addition, some obstacles, although not limitations on market access or national treatment *per se*, may result from regulatory provisions or other measures which make it difficult for foreign suppliers to market their services.

7. This paper proposes that WTO Members who have not yet made commitments on accounting services formulate their commitments based on the list of obstacles shown below, or inscribe in their schedules “no limitations” on market access and national treatment, as some Members already have done. Further, the paper proposes that all Members consider undertaking additional commitments relating to regulation of this sector, by endorsing the attached reference paper. The additional commitments proposed by the United States are those of the WTO Disciplines on Domestic Regulation in the Accountancy Sector, adopted by the Council for Trade in Services in December 1998, with several revisions. The revisions are indicated in bold lettering in the attached reference paper. At the time the Disciplines were adopted, it was agreed that the provisions would not take effect until completion of the next round of negotiations when the Disciplines would be integrated into the GATS.

Obstacles in this sector

- Local equity requirements
- Limitation on the numbers of accountants that can be employed and/or the numbers of new licences to be issued
- Citizenship and prior residence requirements for licensing or certification of accountants, or for requirements to sit for an examination related to obtaining licensing or certification to practice
- Inappropriate restriction on electronic transmission of reports and accounting documents
- Overly burdensome fees and/or taxes on repatriation of profits and other payments
- Limitation on the number of foreign accountants who may be employed
- Licensed or certified foreign accountants are treated less favorably than local accountants in the same jurisdiction
- Discrimination with respect to the form of business organization that is permitted for foreign accounting firms
- Discriminatory requirements relating to ownership and control of foreign accounting firms
- Discriminatory treatment with respect to foreign partners in a joint venture

- In the licensing process, setting discriminatory prior conditions unrelated to the ability of the supplier to provide the service
- Discriminatory requirements for membership in a particular professional body as a prior condition for licensing application
- Discriminatory treatment of applications from foreign service suppliers vis-a-vis domestic applications, including: criteria related to education, experience, examination, and ethics; overall degree of difficulty when testing competence of applicants; the need for in-country experience before sitting examinations
- Minimum requirements for local hiring.

Note: Proposed revisions to this reference paper are indicated in bold lettering.

DISCIPLINES ON DOMESTIC REGULATION IN THE ACCOUNTANCY SECTOR

I. OBJECTIVES

1. Having regard to the Ministerial Decision on Professional Services, Members have agreed to the following disciplines elaborating upon the provisions of the GATS relating to domestic regulation of the sector. The purpose of these disciplines is to facilitate trade in accountancy services by ensuring that domestic regulations affecting trade in accountancy services meet the requirements of Article VI:4 of the GATS. ~~The disciplines therefore do not address measures subject to scheduling under Articles XVI and XVII of the GATS, which restrict access to the domestic market or limit the application of national treatment to foreign suppliers. Such measures are addressed in the GATS through the negotiation and scheduling of specific commitments.~~

II. GENERAL PROVISIONS

2. Members shall ensure that measures ~~not subject to scheduling under Articles XVI or XVII of the GATS~~, relating to licensing requirements and procedures, technical standards and qualification requirements and procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary barriers to trade in accountancy services. For this purpose, Members shall ensure that such measures are not more trade-restrictive than necessary to fulfil a legitimate objective. Legitimate objectives are, *inter alia*, the protection of consumers (which includes all users of accounting services and the public generally), the quality of the service, professional competence, and the integrity of the profession.

III. TRANSPARENCY

3. Members shall make publicly available, including through the enquiry and contact points established under Articles III and IV of the GATS, the names and addresses of competent authorities (i.e. governmental or non-governmental entities responsible for the licensing of professionals or firms, or accounting regulations).

4. Members shall make publicly available, or shall ensure that their competent authorities make publicly available, including through the enquiry and contact points:

- (a) where applicable, information describing the activities and professional titles which are regulated or which must comply with specific technical standards;
- (b) requirements and procedures to obtain, renew or retain any licences or professional qualifications and the competent authorities' monitoring arrangements for ensuring compliance;
- (c) information on technical standards; and upon request, confirmation that a particular professional or firm is licensed to practise within their jurisdiction.

5. Members shall inform another Member, upon request, of the rationale behind domestic regulatory measures in the accountancy sector, in relation to legitimate objectives as referred to in paragraph 2, **including requirements on ownership, citizenship and residency.**

6. When introducing ~~measures~~ **regulations, rules, procedures and other administrative action of general applicability** which significantly affect trade in accountancy services, Members

shall ~~endeavour to~~ provide opportunity for comment, and give consideration to such comments, before adoption.

7. Details of procedures for the review of administrative decisions, as provided for by Article VI:2 of the GATS, shall be made public, including the prescribed time-limits, if any, for requesting such a review.

IV. LICENSING REQUIREMENTS

8. Licensing requirements (i.e. the substantive requirements, other than qualification requirements, to be satisfied in order to obtain or renew an authorization to practice) shall be pre-established, publicly available and objective.

9. Where residency requirements ~~not subject to scheduling under Article XVII of the GATS~~ exist, Members shall consider whether less trade restrictive means could be employed to achieve the purposes for which these requirements were set, taking into account costs and local conditions.

10. Where membership of a professional organisation is required, in order to fulfil a legitimate objective in accordance with paragraph 2, Members shall ensure that the terms for membership are reasonable, and do not include conditions or pre-conditions unrelated to the fulfilment of such an objective. Where membership of a professional organization is required as a prior condition for application for a licence (i.e. an authorization to practice), the period of membership imposed before the application may be submitted shall be kept to a minimum.

11. Members shall ensure that the use of firm names is not restricted, ~~save in fulfilment of a legitimate objective~~, as long as such names do not mislead the public.

12. Members shall ensure that requirements regarding professional indemnity insurance for foreign applicants take into account any existing insurance coverage, in so far as it covers activities in its territory or the relevant jurisdiction in its territory and is consistent with the legislation of the host Member.

13. Fees charged by the competent authorities shall reflect the administrative costs involved, and shall 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. A concessional fee for applicants from developing countries may be considered.

V. LICENSING PROCEDURES

14. Licensing procedures (i.e. the procedures to be followed for the submission and processing of an application for an authorization to practise) shall be pre-established, publicly available and objective, and shall not in themselves constitute a restriction on the supply of the service.

15. Application procedures and the related documentation shall be not more burdensome than necessary to ensure that applicants fulfil qualification and licensing requirements. For example, competent authorities shall not require more documents than are strictly necessary for the purpose of licensing, and shall not impose unreasonable requirements regarding the format of documentation. Where minor errors are made in the completion of applications, applicants shall be given the opportunity to correct them. The establishment of the authenticity of documents shall be sought through the least burdensome procedure and, wherever possible, authenticated copies should be accepted in place of original documents.

16. Members shall ensure that the receipt of an application is acknowledged promptly by the competent authority, and that applicants are informed without undue delay in cases where the application is incomplete. The competent authority shall inform the applicant of the decision concerning the completed application within a reasonable time after receipt, in principle within six months, separate from any periods in respect of qualification procedures referred to below.

17. On request, an unsuccessful applicant shall be informed of the reasons for rejection of the application. An applicant shall be permitted, within reasonable limits, to resubmit applications for licensing.

18. A licence, once granted, shall enter into effect immediately, in accordance with the terms and conditions specified therein.

VI. QUALIFICATION REQUIREMENTS

19. A Member shall ensure that its competent authorities take account of qualifications acquired in the territory of another Member, on the basis of equivalency of education, experience and/or examination requirements.

20. The scope of examinations and of any other qualification requirements shall be 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. Members note the role which mutual recognition agreements can play in facilitating the process of verification of qualifications and/or in establishing equivalency of education.

VII. QUALIFICATION PROCEDURES

22. Verification of an applicant's qualifications acquired in the territory of another Member shall take place within a reasonable time-frame, in principle within six months and, where applicants' qualifications fall short of requirements, shall result in a decision which identifies additional qualifications, if any, to be acquired by the applicant.

23. Examinations shall be scheduled at reasonably frequent intervals, in principle at least once a year, and shall be open for all eligible applicants, including foreign and foreign-qualified applicants. Applicants shall be allowed a reasonable period for the submission of applications. Fees charged by the competent authorities shall reflect the administrative costs involved, and shall 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. A concessional fee for applicants from developing countries may be considered.

24. Residency requirements not subject to scheduling under Article XVII of the GATS shall not be required for sitting examinations.

VIII. TECHNICAL STANDARDS

25. Members shall ensure that measures relating to technical standards are prepared, adopted and applied only to fulfil legitimate objectives.

26. In determining whether a measure is in conformity with the obligations under paragraph 2, account shall be taken of internationally recognized standards of relevant international organizations¹ applied by that Member.

¹ The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.