

**Council for Trade in Services
Special Session**

NEGOTIATIONS ON TRADE IN SERVICES

Report by the Chairman, Ambassador Fernando de Mateo, to the Trade Negotiations Committee

1. The purpose of this report is to provide the Trade Negotiations Committee with the current state of play in the services negotiations. It covers the four major areas: market access, domestic regulation, GATS rules, and the implementation of LDC modalities. In each area, the report indicates what has been achieved, which major gaps remain to be filled and, overall, possible ways forward. To ensure that my report is factual, fair and balanced, I have based it on the views of Members, including coordinators of plurilateral request/offer groups, expressed at the meeting of the Special Session held on 15 April 2011. The views of coordinators of plurilateral request/offer groups are based on their written statements which will be fully reflected in the minutes of the meeting. With respect to the negotiations on domestic regulation and GATS rules, I have drawn heavily on, and append, the reports of the Chairs of the respective negotiating bodies. I emphasize, however, that this report is made entirely under my own responsibility.

2. While Members have intensified their engagement in the negotiations as of January 2011, gaps remain. Limited progress has been achieved in the market access negotiations since July 2008. On domestic regulation, recent intensification of negotiations has produced notable progress, even if disagreement persists on important and basic issues. On GATS rules, while technical work continues, there does not seem to be any convergence regarding the expected outcome in any of the three negotiating subjects (safeguards, government procurement and subsidies). On the implementation of LDC modalities, while Members support a waiver permitting preferential treatment to LDCs, disagreements continue, mainly regarding the scope of the waiver, and rules of origin for services and service suppliers.

3. An ambitious outcome in the services negotiations would be consistent with the overall direction of policy and regulatory reforms already undertaken by WTO Members. Bilateral and regional agreements on services very often reflect significant liberalization and openness. In the DDA negotiations, however, progress in the services negotiations is inextricably linked to progress in other areas, in particular market access negotiations in agriculture and NAMA.

I. MARKET ACCESS

A. STATE OF PLAY

4. Members have continued, on the basis of Annex C of the Hong Kong Ministerial Declaration, to pursue bilateral and plurilateral negotiations in market access. A significant intensification of the negotiations has taken place since the beginning of the year, with three one-week clusters (weeks of 14 February, 14 March and 11 April) focused on different service sectors and modes. Members agree that much more work is needed to conclude the market access negotiations, although their views differ on the current state of play.

5. Some Members have expressed concern over the state of the market access negotiations, indicating that no progress has occurred since the 2010 stocktaking, and little or none since the July 2008 Signalling Conference. They stated that the remaining gaps between offers or signals and bilateral and plurilateral requests or applied regimes were still substantial, and that they had difficulty in obtaining clarity from recipient Members about real difficulties faced in meeting requests. They expressed the need for an ambitious outcome from the services negotiations, which in their view were lagging behind others in the Doha Round. Areas in which further progress on market access was needed included, for some Members, the binding of autonomous liberalization where possible, improved levels of access under mode 3 (including restrictions on foreign equity participation and forms of commercial presence), as well as a robust and satisfactory outcome in mode 4.

6. The status of the market access negotiations was viewed in a different light by others. For some Members, there was an imbalance in the market access negotiations, resulting from developing country flexibilities not being taken into account in other Members' requests, and sectors of export interest not being fully reflected in their offers. One Member noted that there was a substantial 'acquis' in the services negotiations to which developing countries had already made a significant contribution. For several Members, there were plurilateral requests and recent proposals that embodied a level of ambition going beyond that agreed in Annex C of the Hong Kong Ministerial Declaration. One Member, speaking on behalf of the group of recently-acceded Members, stated that these Members had taken on extensive market access commitments at the time of accession that needed to be taken fully into account. Another Member, speaking on behalf of the group of small and vulnerable economies, stated that special SVE concerns needed to be carefully considered in any market access discussions.

B. SECTORAL AND MODAL ASSESSMENTS ON THE BASIS OF PLURILATERAL NEGOTIATIONS

7. This section is based on written statements submitted by the coordinators of the plurilateral request/offer groups at the Special Session of the Council for Trade in Services on 15 April 2011. These groups were established to conduct plurilateral request/offer negotiations (in addition to bilaterals) pursuant to Annex C of the Hong Kong Ministerial Declaration. The views expressed in these statements are those of the coordinators and do not reflect the full range of views in each group, nor are they necessarily shared by all Members participating in the negotiations.

1. Accounting Services

8. Following two plurilateral meetings since November 2010, the co-sponsors of the request reported that two of the 20 recipients intended to increase the existing foreign equity limitations in mode 3, and to make binding commitments in mode 1, in addition to new commitments on taxation services. The remainder of recipients referred to the improvements in their Doha Round offers as the extent of their ability to meet the request. Two recipients generally met the majority of the request. Further, a number of recipients did not attend one or both of the plurilateral meetings.

9. The eight co-sponsors generally met most of the request and two had offered improvements. One, to remove remaining province-based commercial presence limitations for auditing services, and the other to bind autonomous liberalisation in all services covered by the request, including binding modes 1 and 2.

10. Coverage continued to be the major gap. For example, six of the 20 recipients had not made any commitments or offers in any of the subsectors covered by the request, and seven recipients only had partial sectoral coverage. For the co-sponsors, further effort to meet the level of ambition of this request was required.

2. Air Transport Services

11. The co-sponsors reported that some improvements of existing offers had been indicated at the plurilateral meeting in March 2011, notably in the sub-sectors of aircraft maintenance and repair, selling and marketing, and computer reservation services. Two Members signalled that they would make new mode 1 commitments in aircraft maintenance and repair.

12. On ground handling services and airport operation services, some Members indicated that they would take commitments. Two Members considered that legal clarity was needed on the status of ground handling services and airport operation services in the Annex on Air Transport and that such clarity should be sought in the context of the review of the Annex. Some Members considered that these two sub-sectors were not covered by the Annex and, therefore, they would not consider offering any commitments. In sum, gaps still remained between the request and the offers tabled and signals given.

3. Architecture, Engineering, and Integrated Engineering Services

13. Following a plurilateral meeting held in March 2011, the co-sponsors believed that no recipients fully met the request. However, recipients had made varying degrees of progress in terms of enhanced commitments. Recipients could be divided into three categories. First, some had made considerable progress in improving their existing commitments, but a lack of robust commitments in mode 3 and on integrated engineering meant that further commitments from this group was required to reach a satisfactory outcome.

14. Second, some Members had made only minimal progress towards meeting the request. While these recipients had made small improvements over their existing commitments, modes 1 and 2 remained largely unbound and substantial mode 3 limitations persisted. The current level of commitments in this group was weak and required substantial improvement. Third, some Members had yet to make any commitments in the sector. Signals from this group, when there were any, remained weak and vague, making it impossible to consider them as improvements.

15. Overall, the co-sponsors felt that progress fell significantly short of what would be required to conclude negotiations on this sector.

4. Audiovisual Services

16. At a plurilateral meeting in February 2011, the co-sponsors had stressed the importance of new signals in view of the lack of positive indications since the Signalling Conference in 2008, where there were no potential commitments expressed by recipients in any sub-sector. Current commitments on audiovisual services did not reflect market realities or autonomous liberalization, and the sector was also the one with the largest number of MFN exemptions.

17. Only two out of the 29 recipients had expressed some positive indications regarding potential commitments to be introduced in their next offers, and one recipient Member indicated its compliance with almost the totality of the request. The remainder of the recipient Members expressed their cultural and political sensitivities in this sector. These Members were not in a position to schedule any additional commitment or to eliminate MFN exemptions, even though they recognized the openness of their markets. Other Members with scheduled commitments expressed their cautiousness to include new commitments.

18. Co-sponsors wished to bridge the significant gaps existing between the current legal regimes and the existing practice in Members' markets. Identifying differences in the level of sensitivity within this sector would have to be considered by each recipient.

5. Computer-Related Services

19. For the co-sponsors, plurilateral discussions in this sector, as indicated at the 2010 stocktaking exercise, had showed constructive engagement and yielded promising results.

20. However, co-sponsors believed that gaps in coverage remained. For example, out of the 14 recipients and all co-sponsors, three recipients with large gaps in coverage had reflected none or only marginal elements of the request in their signals for the next offer. Most of the recipients indicated their intent to take further commitments in terms of new sub-sectors and modes of supply. The co-sponsors believed that additional efforts were required in order to bridge these gaps and make substantive commitments in this sector.

6. Construction Services

21. The co-sponsors indicated that no further positive indications had been made in bilateral meetings between co-sponsors and recipients since the 2008 Signalling Conference. Although some encouraging statements had been given during the plurilateral meeting held in April 2011, no new significant improvement to current offers was signalled. Hence, the situation remained the same as had been reported during the 2010 stocktaking exercise.

22. About three quarters of the recipients did not cover all sub-sectors and about one third had not offered nor had indicated satisfactory commitments in the two most important sub-sectors, namely general construction work for buildings (CPC 512) and general construction work for civil engineering (CPC 513). About one half of the recipients had not indicated a willingness to eliminate existing restrictions in mode 3. In addition, some recipients had neither commitments nor offers in any construction service.

23. The co-sponsors were also deemed recipients and reportedly had all made efforts to meet the plurilateral request. In addition, some co-sponsors had also indicated their willingness to undertake further commitments.

7. Distribution Services

24. The co-sponsors recalled that in the lead-up to the 2008 Signalling Conference, 12 of the 27 recipients (including the eight co-sponsors) had indicated that they would consider further improvement to their offers in response to the request. At subsequent plurilateral meetings, 11 Members signalled improvements, including seven Members who had not initially tabled improvements in offers. Further, four Members indicated that they were consulting on possibilities to improve their offers. However, some Members subsequently indicated that they might withdraw their offers or signals due to changed circumstances from 2008.

25. A sizable gap remained between the request's ambition as well as autonomous market openings and the offers and signals of recipients. Only five recipients would, if offers and signals were bound, have commitments in all sub-sectors across all modes of supply, with four additional Members having commitments in all sub-sectors but not across all modes of supply. Five recipients neither had commitments nor made any offer or provided signals in any sub-sector of distribution services. Furthermore, no recipient had offered commitments for all sub-sectors included in the request. Regarding the specific request for the removal or easing of foreign equity caps, only 12 recipients had indicated not to have any equity caps and only one recipient signalled easing of existing caps. While welcoming progress, co-sponsors believed that it was important to at least bind current autonomous liberalisation.

8. Energy Services

26. The co-sponsors considered that the overall response to the plurilateral request had thus far been disappointing. Although some indications of new commitments and important improvements in some areas covered by the request had been provided, major gaps still existed. Few Members other than co-sponsors currently came close to satisfying the entire request. All modes of supply were important for this sector, but the co-sponsors were in particular seeking improvements with regard to the removal of restrictions on mode 3, notably foreign equity limitations.

27. In general, while the positive indications received from recipients were appreciated, this limited progress still needed to be translated into firm commitments. Much work therefore remained to be done in order to meet the request.

9. Environmental Services

28. The co-sponsors felt that the state of play had changed little since the submission of a progress report on environmental services during the stocktaking of March 2010. In addition to the indications of improvements made until then, mostly at the 2008 Signalling Conference, some recipient Members and co-sponsors indicated further improvements in bilateral negotiations and at a plurilateral meeting held in April 2011.

29. While welcoming these signals, co-sponsors wished to see further flexibility to remove limitations, increase sectoral coverage, and simplify scheduling language. They also urged those recipients that had not yet offered any commitments to reconsider committing environmental services. Co-sponsors recalled the negotiating mandate to liberalize environmental services under Article 31(iii) of the Doha Declaration; commitments made in the services negotiations would contribute to the fulfilment of that mandate.

10. Financial Services

30. At the 2010 stocktaking, the co-sponsors had identified limited affirmative responses concerning the removal or easing of significant restrictions on mode 3, including with respect to foreign equity participation, juridical form, and economic needs tests. In addition, the offers submitted fell well below current levels of liberalization. The scope of coverage also continued to be problematic. A sizeable gap remained between the level of openness signalled by targeted recipients and that of co-sponsors.

31. At the plurilateral meeting held in April 2011, three Members confirmed their 2008 signals, two Members offered new flexibilities, and two Members signalled that while liberalization was occurring in practice, they would not be able to bind this autonomous liberalization in their revised offers.

32. To date, most recipients had signalled no flexibility to remove foreign equity caps, juridical form restrictions, quantitative/numerical restrictions, or economic needs test requirements. Only a few recipients had signalled some flexibility regarding the cross-border supply of reinsurance and large-scale commercial risk insurance services. Co-sponsors believed that offers from recipients were in need of substantial improvement to achieve the request's liberalization objectives.

11. Legal Services

33. The co-sponsors considered that the state of play had changed little since the submission of a progress report in December 2007. During the plurilateral negotiations in the lead-up to that report, only two of the 16 recipients had indicated possible minor improvements. At the Signalling

Conference in July 2008, neither of these two Members had included legal services in their signalled improvements, and only one other Member had foreshadowed unspecified improvements in legal services.

34. Since the Signalling Conference, no further positive indications were made in bilateral meetings between co-sponsors and recipients. At the plurilateral meeting held in March 2011, one Member indicated that it would make an offer meeting part of the request. A co-sponsor also offered to bind its liberalization in the sector, thereby moving to fully meet the request.

35. Coverage continued to be the major gap. For example, four of the 16 recipients had not made any commitments or offers in the sector. Further effort to meet the level of ambition of this request would be required. A majority of co-sponsors met all or most of the elements of the request.

12. Logistics and Related Services

36. The co-sponsors considered that about one half of the 41 recipients of the request (including co-sponsors) had given positive signals in respect of certain logistics services at the Signalling Conference in 2008. While there were relatively more positive signals on "other related services", few were given in "core freight logistics services" and "management consulting and related services", and only a few positive indications were provided regarding rail and road freight transportation services. Some signals lacked the necessary clarity, which impeded constructive dialogue between the co-sponsors and recipients.

37. The situation remained unchanged from that prevailing at the time of the 2010 stocktaking exercise. Significant gaps persisted between recipients' offers or indications and the request.

13. Maritime Transport Services

38. The co-sponsors indicated that 13 of the 25 recipients had made positive indications at the Signalling Conference or during bilateral and plurilateral meetings, but no recipient had fully met the plurilateral request.

39. Some indications were vague, with wording like "subject to domestic law". In addition, while international freight transport (less cabotage) under mode 1 was emphasized in the request, 16 recipients had made no offers nor expressed positive indications. Moreover, eight recipients had neither commitments nor offers at all in maritime transport services, and four of them had not given any positive indications. The 14 co-sponsors, also deemed recipients, had all made offers based on the plurilateral request. In addition, some co-sponsors had indicated at the Signalling Conference or in bilateral and plurilateral meetings their willingness to make further commitments. Many of the recently-acceded Members also had undertaken comprehensive commitments on maritime transport.

40. Although some recipients and co-sponsors had taken positive steps towards meeting the plurilateral request, it was felt that significant gaps remained and further efforts to meet the level of ambition of the request were needed.

14. Postal and Courier Services, including Express Delivery

41. The co-sponsors indicated that, at the time of the 2010 stocktaking exercise, less than one half of the 20 recipients of the request had indicated a willingness to undertake improved commitments. The scope of these improvements was modest, addressing only one or a few areas of the request. Five of the recipients had no commitments at all in this sector, and of these only two had indicated a willingness to make an offer. Only one targeted recipient had expressed willingness to bind current levels of market access or significantly augment its existing commitments.

42. The four co-sponsors had all made offers based on the request. In addition, two of the co-sponsors had also indicated in their offers their willingness to adopt additional commitments if others did the same. Thus far, none of the recipients had clearly indicated that they would offer additional commitments.

43. At the plurilateral meeting held in March 2011, co-sponsors received confirmation of previous signals. Five recipients were considering expanding or clarifying the scope of their commitments. One recipient was willing to bind current levels of liberalization. However, co-sponsors were disappointed to see no movement since 2008 from others, and one recipient appeared to walk back from prior positive signals.

44. In sum, the majority of recipients had not signalled any improvement. In a number of cases, offers did not correspond to current levels of liberalization. Consequently, both the level and quality of response to the request had yet to meet the co-sponsors' expectations. In their view, significantly more work needed to be done to achieve a meaningful outcome.

15. Private Education Services

45. Co-sponsors considered that the state of play had changed only incrementally since the submission of a progress report in 2007 and the stocktaking of March 2010. Since the stocktaking, one Member had indicated its intention to move from having neither commitments nor an offer in the sector to binding its current level of liberalization in all of the sub-sectors covered by the request. Two Members indicated or confirmed their willingness to further improve their offers by removing limitations in modes 1 or 2, three Members by removing or clarifying the scope of mode 3 limitations, and two Members by expanding or clarifying their coverage of the sub-sector "other education services" (CPC 929). On the other hand, three Members indicated that they would not go beyond their current offer.

46. Coverage was still considered to be the major gap, with six of the 21 recipients (excluding the co-sponsors, which all had offered or scheduled commitments) continuing to indicate no firm intention to take commitments in any education sub-sector. A further three Members had offered or indicated commitments in only one of the two requested sub-sectors.

47. Overall, five Members were assessed as fully or substantially meeting the scope of the request. A further 15 partially met the scope, while six Members did not meet any aspect of the request. Despite some progress, it was felt that significant gaps remained and more work was needed before Members' schedules began to reflect current market realities.

16. Services Related to Agriculture

48. As a result of the plurilateral meeting held in April 2011, the co-sponsors reported that two Members had confirmed that they were considering undertaking commitments going beyond their current offers.

49. In general, although with some exceptions, the expectations of the co-sponsors regarding the fulfilment of the request had not been met. For example, recipients had not committed fully and without limitations in the sub-sector of services related to agriculture, hunting and forestry (CPC 881). Moreover, in general, no commitment had been offered on veterinary services nor on research and development services on natural sciences. Also, several of the commitments offered included exclusions for certain products or regions. Co-sponsors stressed that a positive response to the request would contribute to the implementation of Article IV of the GATS.

17. Telecommunication Services

50. Co-sponsors believed that very little had been achieved since the 2010 stocktaking exercise in terms of positive signals towards meeting the plurilateral request. The Signalling Conference held in 2008 had yielded little evidence that commercially meaningful results would be reached in this service sector.

51. Key aspects of the plurilateral request remained unmet by most of the 22 recipients. For example, out of the ten recipients making signals at the Signalling Conference, only two were positive about meeting the majority of the request; six fell well short of the request; and the remaining two made signals that were considered too vague to qualify as meeting much of the request. The most prominent shortcomings were the lack of full sectoral coverage and the perpetuation of highly restrictive FDI levels, primarily in basic telecommunications.

52. On the other hand, most of the co-sponsors had met the majority of the request and most of those that had not yet done so had signalled a willingness to improve their commitments.

53. Despite its importance, the sector remained plagued by weak commitments, and signals for improvement had been disappointing. Many Members had failed to reflect autonomous liberalization in their own offers.

18. Tourism Services

54. The co-sponsors felt that the discussions held since the submission of the request, including plurilateral meetings in 2007 and 2011, had not yielded a satisfactory response from recipients.

55. Little had changed since the March 2010 stocktaking. Despite a perception that the level of current commitments in this sector was greater than for any other, recipients were still not offering the scope and liberalization sought by the request. None of the recipients expressed its ability to completely meet the request, despite indications by some that they too had offensive interests in this sector. Much ground still needed to be covered in order to reach a common understanding of the request and achieve significant improvements over existing offers.

56. Regarding scope, some recipients excluded complete sub-sectors, especially travel agencies and tour operators services and tourist guides services. Regarding levels of treatment, market access and national treatment restrictions could still be found in the offers of several recipients. No recipient had offered additional commitments, even if this was an important component of the request. This was probably the area that needed more work.

19. Cross-Border Supply

57. The co-sponsors felt that the plurilateral meeting held in March 2011 had showed constructive engagement and increasing recognition that liberalizing trade in cross-border supply was a win-win situation for both developing and developed countries.

58. Since some services which previously had been considered technologically infeasible were now traded commercially, participants agreed that it should be possible to review and identify those services for improvements in offers. It was also agreed that in almost all sectors it was possible to provide consultancy and advisory services through mode 1. Participants did show interest in reviewing their commitments accordingly. Issues of regulatory concern and consumer safety were expressed by certain Members, and some solutions were discussed.

59. Many of the co-sponsors and some of the recipients indicated that they were planning to improve their offers in the area. However, on the whole, the co-sponsors had not heard in concrete terms what improvements were being planned, particularly from many of the key recipients that had major gaps vis-à-vis the plurilateral request. The co-sponsors were concerned that the offers of many Members on mode 1 were still linked to commercial presence, nationality and residency requirements, along with geographical and regional carve-outs. Many of the sub-sectors were not covered and no new specific improvements had been indicated since the Signalling Conference. Therefore, more work was needed in this area to further improve offers in specific terms.

20. Mode 3

60. The co-sponsors reported that only five of the 14 recipients had provided positive indications that, although sometimes vague, could be counted towards meeting the objectives of the request.

61. One Member indicated that it could raise its limitation on foreign equity ownership and reduce other horizontal limitations. Two Members were in a position to eliminate all horizontal economic needs tests. One Member signalled that it could possibly align its offer with new legislation that was less restrictive than specified in its current offer. Two Members signalled that unspecified improvements could be made in their horizontal mode 3 limitations.

62. While welcoming these signals, the co-sponsors would have liked to see further progress towards removing horizontal mode 3 limitations as well as clarifying and simplifying scheduling language.

21. Mode 4

63. The co-sponsors had hosted two plurilateral meetings in 2011. Since many recipients had recently stressed the need for a robust outcome on mode 4, the co-sponsors had expected some real movement forward. However, despite constructive engagement, there were no concrete signals of improvements from many of the key recipients who still had major gaps vis-à-vis the plurilateral request. In general, recipients had reiterated their existing positions.

64. According to the co-sponsors, the sectoral coverage of offers had remained insufficient. Many of the sub-sectors of interest to developing countries were still not covered and in many cases there were important geographical carve-outs from the sectors indicated horizontally. The offers by many Members were still linked to commercial presence and made subject to nationality and residency requirements. Numerical ceilings and economic needs tests remained a significant cause of concern.

65. Another major issue for the co-sponsors was the stability of commitments. In some cases, the commitments had been linked to some domestic list, act or guidelines which diminished the predictability of commitments. This was a major systemic concern, though one Member expressed willingness to address this issue.

66. The co-sponsors' overall assessment was that mode 4 commitments and offers continued to be insufficient. Much more work needed to be done to bridge the gaps and reach a satisfactory outcome. The extent to which this request was met also constituted an indicator of the fulfilment of the development dimension of the Round. A positive outcome in Mode 4 was very important to achieve a balance in market access negotiations in services.

22. Most-Favoured-Nation (MFN) Exemptions

67. The co-sponsors felt that recipients' response to their plurilateral requests had been limited. These requests targeted a total of 165 specific MFN exemptions, and called for the removal, reduction or clarification of these exemptions by 38 recipients, including the co-sponsors.

68. Taking into account the Signalling Conference of 2008, so far 6 recipients had provided very limited positive indications, translating into signals of improvements on a total of 11 targeted exemptions. The situation had remained unchanged since the 2010 stocktaking exercise. The Third MFN Exemption Review conducted by the Council for Trade in Services in November 2010 and March 2011 had similarly yielded no new indication of removal or reduction of exemptions. The situation reflected a significant gap between the requests and recipients' offers and indications.

C. PROPOSALS FOR THE WAY FORWARD

69. Several Members have made proposals with respect to the way forward in the market access negotiations. These proposals, or elements of them, were found useful by other Members. A number of Members agreed with a proposal by Australia that would provide for a core group of Members (Signalling Conference participants plus others interested) to (i) bind current levels of market access in priority sectors; (ii) remove significant impediments to mode 3 trade (in particular limitations on foreign equity and forms of commercial presence); (iii) enhance market access for mode 4; and (iv) achieve other objectives such as commitments to adhere to the telecommunications reference paper. These elements would build on the objectives set out in Annex C, and contain appropriate flexibilities, especially for developing countries. The proposal also set out the means to provide greater clarity on progress toward these objectives, including: frank discussions on flexibilities, negotiations for determining the scope for exceptions, exchange of results of negotiations in illustrative written forms, and reporting to senior officials to assess progress in services in parallel to that in agriculture and NAMA. Some delegations criticized this proposal as going beyond the level of ambition established in Annex C of the Hong Kong Ministerial Declaration.

70. A further proposal on the way forward was presented by Mexico. It would provide for a core group of Members (Signalling Conference participants plus others interested) to undertake binding commitments of their applied levels of liberalization for the 119 subsectors covered by the plurilateral requests, except for an agreed number of sub-sectors. A larger number of exceptions would be agreed for developing country Members. Any Member wishing to request a higher level of liberalization could do so provided the request was accompanied by a reciprocal concession of similar value within services, or across other market access areas. Mexico emphasized that a key benefit of this proposal would be the ability to negotiate trade-offs across all the market access areas of the Round.

71. A proposal by Switzerland and Chinese Taipei reiterated the importance in the market access negotiations of reaffirming the basic negotiating mandates; urged the 2008 Signalling Conference participants and others to improve their offers; emphasized the negotiating guideline that there shall be no a priori exclusion of any service sector or mode of supply; and recognized that special attention had to be given to sectors and modes of supply of export interest to developing country Members. The proposal also enabled Members to assess progress in the negotiations by encouraging them to (i) exchange possible wording to be included in draft schedules; and (ii) report to the Special Session, which would provide the Membership with summaries of the discussions and provide senior-level negotiators with necessary factual reports.

72. A further proposal by Korea contained a roadmap for the completion of the services market access negotiations. It suggested a timetable for further negotiating sessions, an allocation of negotiating topics for these meetings, and a stocktaking and summary by the Special Session at the end of each session.

II. DOMESTIC REGULATION

73. During the meeting of the Special Session held on 15 April, the Chairman of the Working Party on Domestic Regulation made a report aimed at registering progress, so far achieved, in the negotiation of disciplines on domestic regulation pursuant to GATS Article VI:4. The Chairman's Progress Report, made entirely under his own responsibility, to which the Chair's March 2009 text is attached, is contained in document S/WPDR/W/45. I base my assessment largely on the Progress Report and the views expressed during the Special Session.

74. Since the beginning of 2011, Members have been engaged in intensive drafting sessions with the aim of producing a revised text by Easter this year. Considerable efforts were made to reduce gaps, and where this was not yet possible, an attempt was made to isolate differences by introducing brackets into either the paragraphs of the Chair's March 2009 text or in an alternative language proposal. Language options were also reduced, wherever possible. However, by the end of the week of 4 April, it was evident that some distance still needed to be covered in order to produce a revised text. More time was also needed, as not all the provisions of the draft disciplines were given a final consideration during that week.

75. The current situation, following the conclusion of the drafting sessions, was characterised by the WPDR Chair as one where the various paragraphs of the draft disciplines could be said to be at different stages of progress. There were paragraphs where agreement had been reached on an ad referendum basis; paragraphs where there had been no agreement but language proposals reduced to a single alternative with brackets, in addition to the Chair's March 2009 text; and paragraphs where there was limited progress and multiple alternatives and language options remain. In addition, the question of whether a normative standard in the form of a "necessity test" should be included into the disciplines remained unresolved.

76. In the discussion in the Special Session, Members commended the hard work and engagement that went into the intensified phase of the domestic regulation negotiations. Members generally concurred with the Chairman's Progress Report that while there had been progress on some paragraphs, it had not been sufficient for a revised text to be issued. Numerous Members called for continued work toward a revised bracketed text on domestic regulation disciplines by building on what had been achieved during the drafting sessions, and which, in their view, had been well and accurately reflected in the Chairman's Progress Report. Many Members were convinced of the importance of a satisfactory outcome on domestic regulation as a means of ensuring the effectiveness of scheduled commitments. Several Members also observed that the progress on domestic regulation disciplines had to be balanced with advances on the market access side of the services negotiations, and more broadly with progress in other areas of the DDA.

77. Three Members expressed certain disagreements with parts of the Chairman's Progress Report. One Member noted the second part of the Report entitled "State of Play" did not, in its opinion, reflect all the viewpoints reflected during recent debates. For example, in its view, under the single alternative category there were certain paragraphs for which there were other remaining language alternatives. One other Member, while not objecting to the Chairman providing the progress report as he did in paragraphs 1 to 7, was deeply disappointed that he chose to go further and incorporate in his report the working results of the informal discussions, which that Member would not wish to have as a basis for future discussions. Another Member was of the view that the "State of Play" part of the Report did not sufficiently reflect all positions and that the only way forward was to focus on the Chair's March 2009 text. On a separate point, one other Member on behalf of a group of Members noted that as there had been insufficient time during the drafting sessions to complete discussions on all provisions, it would have preferred having all language proposals reflected for those areas and a more general report.

78. On these points, let me recall that the WPDR Chairman had indicated, when introducing his Progress Report, that it would be presented and discussed at the next formal meeting of the Working Party. It would seem to me that all of these points, as well as any others, could be revisited then, as the Working Party considers its next steps.

III. GATS RULES

79. In preparation for the Special Session held on 15 April, the Chairperson of the Working Party on GATS Rules circulated a report (S/WPGR/21 – attached to this report) summarizing the state of negotiations and recent work on emergency safeguard measures (ESM), government procurement, and subsidies.

80. While Members engaged in focused discussions as mandated in Annex C of the Hong Kong Ministerial Declaration, the Chairperson's general assessment was that the proponents had found it difficult to convince the Membership of the need for new disciplines in any of the three areas. Given the fundamental divergences over the objectives and expected outcome of these negotiations, discussions in the WPGR have not been able to move to a text-based process.

81. In the discussion in the Special Session following the WPGR Chair's report, Members generally shared the Chair's assessment of the state of play in these negotiations and some of the proponents reiterated the importance of advancing discussions in the relevant areas. On emergency safeguard measures, some Members indicated their willingness to continue the discussions on ESM-related statistics. On government procurement, some Members looked forward to continuing the dedicated discussions on the economic importance of procurement in services as well as the examination of the proposal for an annex to the GATS. On subsidies, some Members hoped to see continued discussions towards a better understanding of any trade-distortive effects of subsidies and whether any multilateral disciplines to address such effects were needed.

82. I would also support the Chair's assessment of the negotiations and the suggested steps for future work mentioned in her report on each of the three areas.

IV. IMPLEMENTATION OF LDC MODALITIES (LDC WAIVER)

83. At the meeting of the Special Session on 15 April, the delegation of Norway reported on progress in the small group led by it on discussions of a textual proposal by the LDC group for a waiver. The discussions had been constructive, but for the moment not intensive. Two main issues had arisen in the draft text. Some Members stated that the types of preferences covered by the waiver, in order to be effective, needed to go beyond market access measures; others stressed the importance of restricting the coverage of the waiver to market access measures, or at least in having clarity as to what any additional covered measures might be. Similarly, some Members emphasized the need for providing greater clarity on the rules of origin for services and service suppliers benefiting from the preferences. A Member speaking on behalf of the LDC group emphasized the overall importance of a waiver mechanism for the implementation of LDC modalities, and expressed the need for a wide coverage of preferences granted. Several Members said that these differences over the remaining issues would be bridgeable under the right circumstances.

ANNEX I

**WORLD TRADE
ORGANIZATION**

RESTRICTED
S/WPDR/W/45
14 April 2011

(11-1931)

Working Party on Domestic Regulation

DISCIPLINES ON DOMESTIC REGULATION PURSUANT TO GATS ARTICLE VI:4

Chairman's Progress Report

1. The purpose of this Report is to register the progress, so far achieved, in the negotiation of disciplines on domestic regulation pursuant to GATS Article VI:4. It also serves as the Report of the Chairman of the Working Party on Domestic Regulation to the Council of Trade in Services in Special Session.
2. Following the call by Members at the General Council meeting of December 2010 for renewed engagement across all areas of the Doha Development Agenda and in accordance with the wish expressed by Members for a Chair-driven "bottom-up" process, the Working Party has been in an intensified drafting phase since the beginning of the year.
3. A key point in the intensification of the process was the "sweeping exercise" of 10 and 11 February 2011, in which Members undertook a paragraph by paragraph reading of the draft provisions contained in the Chair's March 2009 text¹ and related proposals, with the aim of identifying parts of the draft that were stabilized, and those on which further work is required. Following the "sweeping exercise", which saw a reduction in the number of language options, three separate weeklong intensive drafting sessions were organised to further resolve differences regarding the content and levels of ambition of the various provisions. The first session was held from 28 February to 4 March, the second session was held from 7 to 10 March and the third session from 4 to 8 April 2011.
4. In these sessions, Members discussed and explored language options for all the disciplines envisaged in the Chair's March 2009 text. Proposals have also been submitted to add new paragraphs to the Chair's March 2009 text. These additional paragraphs relate to: a definition of "authorization"; insertion of a "necessity test" or related language; the role of mutual recognition agreements; language examinations; and an additional provision under the chapter on development.
5. Considerable efforts were made in the intensive drafting sessions to identify areas where differences could be isolated by introducing brackets into either the paragraphs of the Chair's March 2009 text or in an alternative language proposal. It should be noted that all language proposals,

¹ Second Revision, Draft Disciplines on Domestic Regulation Pursuant to GATS Article VI.4, Informal Note by the Chairman, Room Document, 20 March 2009.

submitted either in a written form or introduced orally during the intensive phase of negotiations, are contained in the Chairman's Consultative Note.²

6. In the third and final drafting session of 4 to 8 April 2011, Members made a concerted effort to further reduce the language options contained in the Chairman's Consultative Note, with a view to agreeing on language that would capture any convergence achieved. In cases where the divergence could not be bridged, an attempt was made to consolidate the differences into a single alternative containing a select number of brackets.

7. Overall, Members had constructive and engaged discussions but it was evident by the end of the week of 4 April that some distance still needed to be covered in order to produce a revised text. More time was also needed, as not all the provisions of the draft disciplines were given a final consideration during that week. Those paragraphs that were not revisited during the week of 4 April are those in the "introduction", the chapter on "technical standards" and paragraphs 43 to 46, as well as the proposal for an additional paragraph in the "development" chapter. These chapters had, nevertheless, been discussed on previous occasions. The Chapter XI on "institutional provisions" has not been discussed as there have been no language proposals.

8. In terms of the results from the intensification of the process and without prejudice to the working assumption that nothing is agreed until everything is agreed, the draft disciplines can now be said to be at different stages of progress. More specifically, these stages can be characterised in terms of the following three broad categories:

1. **Agreement reached on an *ad referendum* basis:** Captured in this category are those paragraphs on which agreement has been reached on an *ad referendum* basis. In these situations, the paragraph in the Chair's March 2009 text has either been maintained or replaced by a corresponding paragraph. In one instance there was *ad referendum* agreement on including an additional paragraph. In two other instances *ad referendum* agreement was reached on deleting paragraphs from the Chair's March 2009 text. Included under this category are the following:

Chapter I – INTRODUCTION

Paragraph 3

Chapter II – DEFINITIONS

Paragraphs 5, 6, 7 and 8

Chapter III – GENERAL PROVISIONS

Paragraph 10

Chapter IV – TRANSPARENCY

Paragraphs 13 and 14

Chapter V – LICENSING REQUIREMENTS

Paragraph 16

² RD/SERV/46/Rev.2. This Note included language proposals up to 23 March 2011.

Chapter VII – QUALIFICATION REQUIREMENTS

Paragraph 29

Chapter VIII – QUALIFICATION PROCEDURES

An additional paragraph on "mutual recognition"

Chapter X – DEVELOPMENT

Paragraph 46

2. **Single alternative:** While this category reflects situations where agreement has not yet been reached, progress has been achieved and alternative language proposals have been reduced to one single negotiating text with remaining differences captured in brackets. In some cases, language proposals, which share the same basis but appear in the Chairman's Consultative Note as separate options, have been consolidated into a single alternative with brackets reflecting the differences. Included under this category are proposals made under the following paragraphs.

Chapter I – INTRODUCTION

Paragraphs 1 and 4

Chapter II – DEFINITIONS

Paragraph 9

Chapter III – GENERAL PROVISIONS

Paragraphs 11 and 12

Chapter IV – TRANSPARENCY

Paragraph 15

Chapter VI – LICENSING PROCEDURES

Paragraphs 18, 21, 22 and 26

Chapter VIII – QUALIFICATION PROCEDURES

Paragraphs 34, 35, 36,37 and 39

Chapter X – DEVELOPMENT

Paragraphs 44 and 45

3. **Multiple alternatives:** This category reflects situations where progress has been limited, and multiple alternatives and language options remain. Included in this category are proposals made under the following paragraphs:

Chapter I – INTRODUCTION

Paragraph 2

Chapter VI – LICENSING PROCEDURES

Paragraphs 17, 19, 20, 23, 24, 25

Chapter VII – QUALIFICATION REQUIREMENTS

Paragraphs 27 and 28

Chapter VIII – QUALIFICATION PROCEDURES

Paragraphs 30, 31, 32, 33 and 38

Chapter IX – TECHNICAL STANDARDS

Paragraphs 40 and 41

Chapter X – DEVELOPMENT

Paragraphs 42 and 43

9. All of the paragraphs agreed on an *ad referendum* basis and the two other remaining categories of paragraphs have been included in this progress report and represent the textual elements for a revised text. The task ahead for the Working Party is to convert all the remaining paragraphs under category 3 into either category 2 or, better still, to category 1. This would provide the basis for the formulation of a revised text with brackets.

10. For category 2 paragraphs, the differences have been consolidated into a single alternative, but there remains a significant number of brackets in some of the paragraphs, particularly in the chapters on licensing and qualification procedures, and in general provisions.

11. In terms of the paragraphs in category 3, there are many facets to the outstanding issues, which are both technical and policy-related in nature. There are nevertheless some gateway issues that if resolved could help unblock the discussions. For example, while not agreed to be included in the disciplines, the proposal on a definition of "authorization" would have implications for the scope of the definitions and may thus determine the application of the substantive provisions of the disciplines. Agreement on this issue could facilitate convergence throughout many parts of the disciplines. It would also help tremendously if there could be some resolution to the fundamental difference on whether the disciplines in the licensing and qualification chapters should have similar or different levels of ambition. Resolving this issue would facilitate agreement on the recurring problem of whether paragraphs under these chapters should be merged or kept separate.

12. It should be noted that the presentation of the paragraphs on licensing requirements and procedures, qualification requirements and procedures, in this report, is without prejudice to the final outcome on the structure of these chapters and whether certain paragraphs would be merged. In some cases, through the discussions, Members arrived at a single alternative with a merged paragraph. In

other instances, there are multiple alternatives with language options based either on the separate paragraphs of the Chair's March 2009 text or on a proposal for a merged paragraph. The important issue of the structure of these chapters would be better addressed in light of the final content of the respective paragraphs.

13. With respect to technical standards, a key question that remains to be resolved is whether voluntary standards fall within the scope of the disciplines and if so, how can Members effectively discipline action by private actors outside the overall scope of the GATS. For the development chapter, there are proposals for transition periods as well as other development-oriented measures. These proposals have helped frame what is desired from this chapter, though the degree of flexibility needed is something that would usually be best addressed after it is clear what strength of obligation would be imposed by the disciplines. While there are multiple alternatives to one paragraph of the introductory chapter, these are differences of a somewhat different nature, since they relate to appropriate preambular language reflecting the content of the disciplines, rather than the operational provisions themselves.

14. Apart from the differences reflected in these categories, one of the most difficult subjects in these negotiations has been the question of whether a normative standard in the form of a "necessity test" should be included into the disciplines. On this subject, Members appear to have fundamental differences on the very principle of whether such a normative standard is needed. Dedicated consultations, including text-based discussions, have been held, and the language proposals for a "necessity test" have been included in the Chairman's Consultative Note and in the textual elements contained in this progress report. While the language has been reflected in the chapters in which they were proposed, such inclusion does not in any way indicate agreement on the principle and inclusion of this subject in the disciplines, rather these serve as a placeholder for the proposals.

15. The state of play regarding the textual elements for a revised text, which form part of this progress report have been compiled into their respective categories and follow below. The Chair's March 2009 text has also been appended to this report.

STATE OF PLAY

CHAIR'S MARCH 2009 TEXT

I. INTRODUCTION

1. Pursuant to Article VI:4 of the GATS, Members have agreed to the following disciplines on domestic regulation.

SINGLE ALTERNATIVE

1. Having regard to the objectives in Article VI:4 of the GATS, Members have agreed to the following disciplines on domestic regulation.

CHAIR'S MARCH 2009 TEXT

2. The purpose of these disciplines is to facilitate trade in services by ensuring that measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards are based on objective and transparent criteria, such as competence and the ability to supply the service, and do not constitute disguised restrictions on trade in services.

MULTIPLE ALTERNATIVES

2. The purpose of these disciplines is to facilitate trade in services by ensuring that measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards are based on objective and transparent criteria, such as competence and the ability to supply the service, and do not constitute disguised restrictions on trade in services, while guaranteeing the right of Members to regulate in order to achieve public policy objectives.

"Necessity test"-related proposals:

2. The purpose of these disciplines is to facilitate trade in services by ensuring that measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards are based on objective and transparent criteria, such as competence and the ability to supply the service, and do not constitute unnecessary barriers to trade in services.

2. The purpose of these disciplines is to facilitate trade in services by ensuring that measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards 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; and
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

CHAIR'S MARCH 2009 TEXT

3. Members recognize the right to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right. These disciplines should not be construed to prescribe or impose particular regulatory approaches or any particular regulatory provisions in domestic regulation.

AGREEMENT REACHED ON AN *AD REFERENDUM* BASIS

Same as above.

CHAIR'S MARCH 2009 TEXT

4. Members recognize the difficulties which may be faced by individual developing country Members in implementing disciplines on domestic regulation, particularly difficulties relating to level of development, size of the economy, and regulatory and institutional capacity. Members recognize the difficulties which may be faced by service suppliers, particularly those of developing country Members, in complying with measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards of other Members.

SINGLE ALTERNATIVE

4. Members recognize the difficulties which may be faced by individual developing country Members in implementing disciplines on domestic regulation, particularly difficulties relating to level of development, [size of the economy,] and regulatory and institutional capacity. Members recognize the difficulties which may be faced by service suppliers, [particularly those of developing country Members,] in complying with measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards of other Members. In this context, Members take particular account of the specific difficulties which may be faced by service suppliers from Least Developed Country Members.

CHAIR'S MARCH 2009 TEXT

II. DEFINITIONS

5. "Licensing requirements" are substantive requirements, other than qualification requirements, with which a natural or a juridical person is required to comply in order to obtain, amend or renew authorization to supply a service.

AGREEMENT REACHED ON AN *AD REFERENDUM* BASIS

Same as above.

CHAIR'S MARCH 2009 TEXT

6. "Licensing procedures" are administrative or procedural rules that a natural or a juridical person, seeking authorization to supply a service, including the amendment or renewal of a licence, must adhere to in order to demonstrate compliance with licensing requirements.

AGREEMENT REACHED ON AN *AD REFERENDUM* BASIS

Same as above.

CHAIR'S MARCH 2009 TEXT

~~7. "Qualification requirements" are substantive requirements relating to the competence of a natural person to supply a service, and which are required to be demonstrated for the purpose of obtaining authorization to supply a service.~~

AGREEMENT REACHED ON AN *AD REFERENDUM* BASIS

7. "Qualification requirements" are substantive requirements relating to the competence of a natural person in relation to the supply of a service, and which are required to be demonstrated for the purpose of obtaining authorization to supply a service.

CHAIR'S MARCH 2009 TEXT

8. "Qualification procedures" are administrative or procedural rules that a natural person must adhere to in order to demonstrate compliance with qualification requirements, for the purpose of obtaining authorization to supply a service.

AGREEMENT REACHED ON AN *AD REFERENDUM* BASIS

Same as above.

CHAIR'S MARCH 2009 TEXT

9. "Technical standards" are measures that lay down the characteristics of a service or the manner in which it is supplied. Technical standards also include the procedures relating to the enforcement of such standards.

SINGLE ALTERNATIVE

9. "Technical standards" are measures [that prescribe] the characteristics of a service or the manner in which it is supplied. Technical standards also include the procedures relating to the enforcement of such standards.

PROPOSAL FOR A DEFINITION ON "AUTHORIZATION"

One Member proposed to add the following definition of the word "authorization" to the Chapter on Definitions.

"Authorization" is a measure permitting a natural or legal person to engage in the supply of a service in the territory or a regional subdivision of a Member, and includes a license or a determination that such a person is qualified to supply a service. "Authorization" does not include measures:

- (a) governing the general conduct of a business, including locations, times of operation and similar conditions;
- (b) governing the safety or the impact on human, animal or plant life or health of the service or of construction or engineering activities associated with the service; or
- (c) concerning government procurement.

During consultations, it was proposed to split this paragraph in two parts, one part with a definition of "authorization" and another part that indicates measures that should not be included under the term and could be placed in either the chapter on general provisions or paragraph 25..

For the purpose of these disciplines, "authorization" refers to the granting of permission to a natural or legal person to supply a service in or into the territory or a regional subdivision of a Member, and includes a license or a determination that such a person is qualified to supply a service.

"Authorization" does not include measures:

- (a) governing the general conduct of business, including locations, times of operation and similar conditions;
- (b) governing the safety or the impact on human, animal or plant life or health of the service or the physical structures associated with the service; or
- (c) concerning government procurement.

CHAIR'S MARCH 2009 TEXT

III. GENERAL PROVISIONS

10. These disciplines apply to measures by Members relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards affecting trade in services where specific commitments are undertaken. They do not apply to measures to the extent that they constitute limitations subject to scheduling under Article XVI or XVII.

AGREEMENT REACHED ON AN *AD REFERENDUM* BASIS

Same as above.

CHAIR'S MARCH 2009 TEXT

11. Measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards shall be pre-established, based on objective and transparent criteria and relevant to the supply of the services to which they apply.

SINGLE ALTERNATIVE

11. Measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards shall be:

(a) based on objective^[1] and transparent criteria^[2] and

(b) clearly related to the objectives of the measure at issue and to the service being regulated.

Applications for licensing and/or qualifications shall be examined under measures in force at the date of application. Where pending applications are to be examined under amended or replaced measures, the Member shall promptly inform all applicants and provide reasonable time to such applicants to adapt their applications to such amended/new measures.

[¹ Members understand that objective criteria include criteria that may not be quantifiable, such as competence, ability to supply the service and environmental, social and health effects.]

[² Members understand that in reaching decisions a competent authority may balance competing criteria.]

"NECESSITY TEST"-RELATED PROPOSALS

One Member proposed to add paragraph 11bis to the Chapter on General Provisions:

[11bis. Members shall ensure that measures 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 services. For this purpose, Members shall ensure that such measures are not more trade-restrictive than necessary to fulfil specific national policy objectives, including to ensure the quality of a service.]

Another Member proposed to add the following paragraph to the Chapter on General Provisions:

[The content of the measures should be reasonable in light of ensuring the quality of the service, taking into account such elements as the views and needs of the service providers.]

CHAIR'S MARCH 2009 TEXT

12. Nothing in these disciplines prevents Members from exercising the right to introduce or maintain regulations in order to ensure provision of universal service, in a manner consistent with their obligations and commitments under the GATS.

SINGLE ALTERNATIVE

During consultations, a number of Members agreed that the paragraph could be deleted. A number of other Members preferred to retain the paragraph for the time being. Some Members were willing to consider moving this paragraph to the introductory chapter.

[12. Nothing in these disciplines prevents Members from exercising the right to introduce or maintain regulations in order to ensure provision of universal service, in a manner consistent with their obligations and commitments under the GATS.]

CHAIR'S MARCH 2009 TEXT

IV. TRANSPARENCY

13. — Each Member shall publish promptly, through printed or electronic means, measures of general application relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards, as well as detailed information regarding these measures. This information shall include, *inter alia*:

- (a) — whether any authorization, including application and/or renewal where applicable, is required for the supply of services;
- (b) — the official titles, addresses and contact information of relevant competent authorities;
- (c) — applicable licensing requirements and criteria, terms and conditions of licences, and licensing procedures and fees;
- (d) — applicable qualification requirements, criteria and procedures for verification and assessment of qualifications including fees;
- (e) — applicable technical standards;
- (f) — procedures relating to appeals or reviews of applications;
- (g) — monitoring, compliance or enforcement procedures including notification procedures for non-compliance;
- (h) — where applicable, how public involvement in the licensing process, such as hearings and opportunity for comment, is provided for;
- (i) — exceptions, derogations or changes to measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards; and
- (j) — the normal timeframe for processing of an application.

Where publication is not practicable, such information shall be made otherwise publicly available.

AGREEMENT REACHED ON AN AD REFERENDUM BASIS

13. Each Member shall publish promptly, through printed or electronic means, all measures of general application relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards. This shall include the following information, where it exists, *inter alia*:

- (a) requirements for authorization, requirements for periodic renewal of such authorization, and generally applicable terms and conditions of such authorization;
- (b) the official titles, addresses and contact information of relevant competent authorities;
- (c) applicable licensing requirements and procedures (including requirements, criteria and procedures for application and/or renewal, and applicable fees);

- (d) applicable qualification requirements and procedures (including requirements, criteria and procedures for application and/or renewal, and applicable fees);
- (e) applicable technical standards;
- (f) applicable procedures relating to appeals or reviews of decisions concerning applications for licenses and for the verification and assessment of qualifications;
- (g) applicable procedures for monitoring or enforcement of the terms and conditions of licenses and for the verification and assessment of qualifications;
- (h) where applicable, opportunity and associated procedures for public involvement such as through hearings and opportunity for comment;
- (i) established timeframe for processing of an application.

Where publication is not practicable, such information shall be made otherwise publicly available, and shall be provided to service suppliers upon request. Nothing in this paragraph shall be construed as requiring a Member to adopt or maintain any measure not otherwise required by these disciplines.

CHAIR'S MARCH 2009 TEXT

14. Each Member shall maintain or establish appropriate mechanisms for responding to enquiries from any service suppliers regarding any measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards. Such enquiries may be addressed through the enquiry and contact points established under Articles III and IV of the GATS or any other mechanisms as appropriate.

AGREEMENT REACHED ON AN *AD REFERENDUM* BASIS

Same as above.

CHAIR'S MARCH 2009 TEXT

15. Each Member shall endeavour to ensure that any measures of general application it proposes to adopt in relation to matters falling within the scope of these disciplines are published in advance. Each Member should endeavour to provide reasonable opportunities for service suppliers to comment on such proposed measures. Each Member should also endeavour to address collectively in writing substantive issues raised in comments received from service suppliers with respect to the proposed measures.

SINGLE ALTERNATIVE

15. Each Member shall endeavour to publish in advance any [measures] [regulations] of general application it proposes to adopt in relation to matters falling within the scope of these disciplines. Each Member [should endeavour to] [shall to the extent practicable] provide reasonable opportunities for service suppliers [and other interested parties] to comment on such proposed [measures][regulations] [prior to their entry into force]. [Each Member should also endeavour to address collectively in writing substantive issues raised in comments received from service suppliers [and other interested parties] with respect to the proposed [measures][regulations].]

CHAIR'S MARCH 2009 TEXT

V. LICENSING REQUIREMENTS

~~16. — Where residency requirements for licensing not subject to scheduling under Article XVII of the GATS exist, each Member shall consider whether less trade restrictive means could be employed to achieve the purposes for which these requirements were established.~~

VII. QUALIFICATION REQUIREMENTS

~~29. — Residency requirements, other than those subject to scheduling under Article XVII of the GATS, shall not be a pre-requisite for assessing and verifying the competence of a service supplier of another Member.~~

AGREEMENT REACHED ON AN AD REFERENDUM BASIS

It was agreed on an ad referendum basis to delete paragraphs 16 and 29.

CHAIR'S MARCH 2009 TEXT

VI. LICENSING PROCEDURES

17. Each Member shall ensure that licensing procedures, including application procedures and, where applicable, renewal procedures, are as simple as possible and do not in themselves constitute a restriction on the supply of services.

VIII. QUALIFICATION PROCEDURES

31. Each Member shall ensure that qualification procedures are as simple as possible and do not in themselves constitute a restriction on the supply of services.

MULTIPLE ALTERNATIVES

Options for a merged paragraph:

Each Member shall ensure that licensing and qualification procedures for the purpose of obtaining authorization to supply a service are [simple,] reasonable, clear and relevant [to the underlying policy objectives], [taking into account the nature of the requirements to be met and the criteria to be assessed,] [and do not in themselves constitute a restriction on the supply of services]. [Members shall ensure that such procedures do not in themselves unduly impede fulfilment of requirements.]

Each Member shall ensure that licensing and qualification procedures are:

- (a) [simple] [as simple as possible][taking into account the nature of the requirements to be met and the criteria to be assessed,] [as simple as the nature of the requirements to be met and the criteria to be assessed permit]
- (b) [reasonable and clear] [reasonable, objective and transparent]
- (c) [based on objective and transparent criteria] [applied in an objective and impartial manner] and
- (d) [clearly] related to the objectives of the measure at issue and to the service being regulated

[and do not in themselves constitute a restriction on the supply of services.]

"Necessity test"-related proposals:

17. Each Member shall ensure that licensing procedures, including application procedures and, where applicable, renewal procedures, are as simple as possible and do not in themselves constitute a restriction on the supply of services. Each Member shall ensure that no procedures are imposed other than necessary to verify the compliance with the licensing requirements by the applicant.

31. Each Member shall ensure that qualification procedures are as simple as possible and do not in themselves constitute a restriction on the supply of services. Each Member shall ensure that no procedures are imposed other than necessary to verify compliance with qualification requirements by the applicant.

CHAIR'S MARCH 2009 TEXT

18. Each Member shall ensure that the procedures used by, and the decisions of, the competent authority in the licensing process are impartial with respect to all applicants. The competent authority should be operationally independent of and not accountable to any supplier of the services for which the licence is required.

SINGLE ALTERNATIVE

18. Each Member shall ensure that the licensing and qualification procedures used by, and the related decisions of, any competent authority are impartial. The competent authority should reach its decisions in an independent manner.^[1]

[¹ 'Competent authorities' are, for purposes of these disciplines, the authorities under Article I:3(a)(i) and (ii) charged with the establishment or enforcement of licensing requirements and procedures, qualification requirements and procedures and technical standards with regard to a particular service within the territory of a WTO Member.]

CHAIR'S MARCH 2009 TEXT

19. An applicant shall, in principle, not be required to approach more than one competent authority in connection with an application for a licence.

32. An applicant shall, in principle, not be required to approach more than one competent authority for qualification procedures.

MULTIPLE ALTERNATIVES

19. An applicant [shall, to the extent practicable] [should] [should, in principle,] not be required to approach more than one competent authority in connection with an application for a licence.

32. An applicant [shall, to the extent practicable] [should, in principle,] not be required to approach more than one competent authority for qualification procedures.

Option for a merged paragraph:

Each Member shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application required in order to obtain authorisation for the supply of a service.

CHAIR'S MARCH 2009 TEXT

20. An applicant should be permitted to submit an application at any time, except where licenses are limited in numbers, including in public tendering. Where specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. Where possible, applications should be accepted in electronic format under the same conditions of authenticity as paper submissions.

33. An applicant should be permitted to submit an application at any time. The competent authority shall initiate the processing of an application without undue delay.

MULTIPLE ALTERNATIVES

20. The competent authority [shall] [should] permit an applicant to submit an application at any time. Where specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. The competent authority [shall, to the extent practicable][should] accept applications in electronic format under the equivalent conditions of authenticity as paper submissions.

33. The competent authority [shall] [should] permit an applicant to submit an application at any time. Where specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. The competent authority [shall, to the extent practicable][should] accept applications in electronic format under the equivalent conditions of authenticity as paper submissions.

Option for a merged paragraph:

The competent authority [shall] [should] permit an applicant to submit an application at any time. Where specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. To the extent practicable, the competent authority shall accept applications in electronic format under the equivalent conditions of authenticity as paper submissions.

CHAIR'S MARCH 2009 TEXT

21. The competent authority shall, within a reasonable period of time after receipt of an application which it considers incomplete, inform the applicant, to the extent feasible identify the additional information required to complete the application, and provide the opportunity to correct deficiencies.

35. The competent authority shall, within a reasonable period of time after receipt of an application, which it considers incomplete, inform the applicant, to the extent feasible, identify the additional information required to complete the application, and provide the opportunity to correct deficiencies.

SINGLE ALTERNATIVE

Merged paragraph:

Where the competent authority considers that an application is incomplete [and] [or] determines that it needs additional information [to reach a decision] [for the application to be considered complete], it shall, within a reasonable period of time:

- (a) inform the applicant,
- (b) [to the extent practicable] identify the information required, and
- (c) [to the extent practicable] provide the opportunity to correct deficiencies.

CHAIR'S MARCH 2009 TEXT

22. Authenticated copies should be accepted, where possible, in place of original documents.
36. Authenticated copies should be accepted, where possible, in place of original documents.

SINGLE ALTERNATIVE

Merged paragraph:

The competent authority shall, to the extent its domestic law permits, accept authenticated copies in place of original documents.

CHAIR'S MARCH 2009 TEXT

23. If an application for a licence is rejected by the competent authority, the applicant shall be informed in writing and without undue delay. In principle, the applicant shall, upon request, also be informed of the reasons for rejection of the application and of the timeframe for an appeal against the decision. An applicant should be permitted, within reasonable time limits, to resubmit an application.

37. If an application for verification and assessment of qualification is rejected by the competent authority, the applicant shall be informed in writing and without undue delay. In principle, the applicant shall, upon request, also be informed of the reasons for rejection of the application and of the timeframe for an appeal against the decision. An applicant should be permitted, within reasonable time limits, to resubmit an application.

MULTIPLE ALTERNATIVES

23. If an application for a licence is rejected by the competent authority, the applicant [should] be informed in writing and without undue delay. In principle, the applicant shall, upon request, also be informed of the reasons for rejection of the application and of the timeframe for an appeal against the decision. [Where applicable,] [subject to the availability of licences,] an applicant should be permitted, within reasonable time limits, to resubmit an application.

Option for a merged paragraph:

If the competent authority rejects an application, it shall inform the applicant without undue delay, and to the extent practicable in writing. It [shall] [should] inform the applicant, upon request, of the reasons for rejection of the application and where [applicable] [possible], any deficiencies that have been identified. It [shall] [should] inform the applicant of the timeframe and of the procedures for [any available] appeal against the decision. [It [shall] [should] permit an applicant to resubmit an application in accordance with the relevant authority's established procedures [, except where the relevant authority limits the number of licenses or qualification determinations].] [It shall permit an applicant to resubmit an application within reasonable time limits subject to fulfilment of prescribed requirements and procedures and availability and/or eligibility.]

CHAIR'S MARCH 2009 TEXT

24. Each Member shall ensure that the processing of an application for a license, including reaching a final decision, is completed within a reasonable timeframe from the submission of a complete application. Each Member shall endeavour to establish the normal timeframe for processing of an application.

38. Each Member shall ensure that the processing of an application, including verification and assessment of a qualification, is completed within a reasonable timeframe from the submission of a complete application. Each Member shall endeavour to establish the normal timeframe for processing of an application.

MULTIPLE ALTERNATIVES

24. Each Member shall ensure that the processing of an application for a license, including reaching a final decision, is completed within a reasonable timeframe from the submission of a complete application. Each Member shall [endeavour to establish][indicate] the [generally applicable] timeframe for processing of an application [or explain why such an estimation of a timeframe may not be possible].

38. Each Member shall ensure that the processing of an application, including verification and assessment of a qualification, is completed within a reasonable timeframe from the submission of a complete application. Each Member shall [endeavour to establish][indicate] the [generally applicable] timeframe for processing of an application.

Option for a merged paragraph:

Each Member shall ensure that the processing of an application, including reaching a final decision, is completed within a reasonable timeframe from the submission of a complete application. Each Member shall [provide an estimation of] [indicate] [endeavour to establish] the timeframe for processing of an application [or, in case of licensing, explain why such an estimation of a timeframe may not be possible].

CHAIR'S MARCH 2009 TEXT

25. Each Member shall ensure that a licence, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.

30. Once qualification requirements and any applicable licensing requirements have been fulfilled, each Member shall ensure that a service supplier is allowed to supply the service without undue delay.

MULTIPLE ALTERNATIVES

25. Each Member shall ensure that a licence is granted as soon as the conditions required for authorization have been met and, once granted, enters into effect without undue delay in accordance with [the] [its] terms and conditions specified therein.

25. Each Member shall ensure that a licence, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein. Among the reasons a service supplier may not be permitted to provide immediate or continuous service is the need to comply with measures outside the scope of these disciplines. Such measures include *inter alia* any requirement, not specified in a license itself,¹ that relates to:

- (a) the general conduct of a business, including locations, times of operation and similar conditions;
- (b) the safety or the impact on human, animal or plant life or health of the service or of construction or engineering activities associated with the service; or
- (c) government procurement [subject to the outcome of negotiations under GATS Article XIII].

¹ Other than a general requirement of adherence to applicable law.

25. Each Member shall ensure that a licence, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein. This is without prejudice to the need to attain permissions not directly related to the competence or abilities of the service provider or the quality of the service provided. Examples of such permissions include: construction permits, permits related to the time and place of the supply of the service, and health and safety regulations.

25. Each Member shall ensure that a licence, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.¹

¹This is without prejudice to the need to comply with any other applicable laws and the need to obtain any ancillary approvals not directly related to the competence or abilities of the service provider or the quality of the service provided.

30. Once qualification requirements and any applicable licensing requirements have been fulfilled [and the competent authority grants permission to operate], each Member shall ensure that a service supplier is allowed to supply the service without undue delay in accordance with applicable terms and conditions.

Options for a merged paragraph:

Each Member shall ensure that a licence, once granted, enters into effect without undue delay in accordance with its terms and conditions. Each Member shall also ensure that, once qualification requirements and any applicable licensing requirements have been fulfilled, a service supplier is allowed to supply the service without undue delay. This is without prejudice to the fulfilment of any requirements other than the applicable qualification and licensing requirements.

Each Member shall ensure that an authorization to supply a service [is granted] as soon as the [conditions required for authorization] [licensing or qualification requirements] have been met and, once granted, enters into effect without undue delay in accordance with its terms and conditions. [This is without prejudice to the fulfilment of any requirements other than the applicable qualification and licensing requirements.]

CHAIR'S MARCH 2009 TEXT

26. Each Member shall ensure that licensing fees¹ are reasonable in terms of the costs incurred by the competent authority, including those for activities related to regulation and supervision of the relevant service, and do not in themselves restrict the supply of the service.

¹ Licensing fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

39. Each Member shall ensure that any fees relating to qualification procedures are commensurate with the costs incurred by the competent authorities and do not in themselves restrict the supply of the service.

SINGLE ALTERNATIVE

During consultations, an alternative for paragraph 26 and an alternative for paragraph 39 was proposed:

26. Each Member shall ensure that fees related to licensing procedures¹ charged by the competent authority are reasonable [and commensurate with the cost incurred]. Such fees may include the cost of activities related to regulation and supervision of the relevant service, but [may][do] not in themselves restrict the supply of the service.

¹ These fees do not include fees for the use of natural resources, payments for auction, [tendering or other non-discriminatory means of awarding concessions,] or mandated contributions to universal service provision. Except in situations described in Article I:3(a)(ii) of the GATS, such fees also do not include fees charged by private entities for assessments in support of applications such as fees for privately-administered examinations or privately-generated credit reports.

39. Each Member shall ensure that fees related to qualification procedures¹ charged by the competent authority are reasonable [and commensurate with the cost incurred]. Such fees may include the cost of activities related to regulation and supervision of the relevant service, but [may][do] not in themselves restrict the supply of the service.

¹ Except in situations described in Article I:3(a)(ii) of the GATS, such fees do not include fees charged by private entities for assessments in support of applications such as fees for privately-administered examinations or privately-generated credit reports.

CHAIR'S MARCH 2009 TEXT

VII. QUALIFICATION REQUIREMENTS

27. Where a Member imposes qualification requirements for the supply of a service, it shall ensure that adequate procedures exist for the verification and assessment of qualifications held by service suppliers of other Members. In verifying and assessing qualifications, where the competent authority finds it relevant, it shall give due consideration to relevant professional experience of the applicant as a complement to educational qualifications. Where the competent authority considers that membership in a relevant professional association in the territory of another Member is indicative of the level of competence or extent of experience of the applicant, such membership shall also be given due consideration.

MULTIPLE ALTERNATIVES

27. Where a Member imposes qualification requirements for the supply of a service, it shall ensure that adequate procedures exist for the verification and assessment of qualifications held by service suppliers of other Members. In verifying and assessing qualifications, where the competent authority considers it relevant, it shall give due consideration to professional experience[, as a complement to educational qualifications,] and to membership in a professional association in the territory of another Member.

27. Where a Member imposes licensing or qualification requirements for the supply of a service, it shall ensure that adequate procedures exist for assessing an applicant's fulfilment of such requirements, including procedures for verification and assessment of qualifications.

CHAIR'S MARCH 2009 TEXT

28. Provided an applicant has presented all necessary supporting evidence of qualifications, the competent authority, in verifying and assessing qualifications, shall identify any deficiency and inform the applicant of requirements to meet the deficiency. Such requirements may include, *inter alia*, course work, examinations, training, and work experience. Where appropriate, each Member shall allow applicants to fulfil such requirements in the home, host or any third jurisdiction.

MULTIPLE ALTERNATIVES

~~28. Provided an applicant has presented all necessary supporting evidence of qualifications, the competent authority, in verifying and assessing qualifications, shall identify any deficiency and inform the applicant of requirements to meet the deficiency. Such requirements may include, *inter alia*, course work, examinations, training, and work experience. Where appropriate, each Member shall allow applicants to fulfil such requirements in the home, host or any third jurisdiction.~~

28. Provided an applicant has presented all necessary supporting evidence of qualifications, the competent authority, in verifying and assessing qualifications, [shall][may] identify any deficiency and inform the applicant of requirements to meet the deficiency. Such requirements may include, *inter alia*, course work, examinations, training, and work experience, each of which shall be based on criteria relevant for the supply of the service. The possibility of fulfilling such requirements should not be restricted to host country institutions. The possibility of meeting these requirements in the home country, including through electronic submissions, should also be provided for unless there are justifiable reasons to the contrary which should be clearly stated. Where appropriate, each Member shall also allow applicants to fulfil such requirements in any third jurisdiction.

PROPOSAL ON LANGUAGE EXAMINATIONS

Proposal to include a paragraph in between paragraph 29 and paragraph 30 of the Chair's March 2009 text:

[Members should not require passage of language examinations unless they are based on meeting legitimate public policy objectives such as the safety of the consumer, ensuring quality of the services or where working knowledge of the language is essential for practice.]

CHAIR'S MARCH 2009 TEXT

VIII. QUALIFICATION PROCEDURES

34. Where examinations are required, each Member shall ensure that they are scheduled at reasonably frequent intervals. Applicants for examinations shall be allowed a reasonable period to submit applications.

SINGLE ALTERNATIVE

34. Where examinations are required, each Member shall [encourage] [to the extent practicable, ensure that] the relevant authority [to schedule] [schedules] examinations at reasonably frequent intervals. Applicants for examinations shall be allowed a reasonable period to submit applications. Each Member [shall][should], [to the extent practicable], having regard to the costs and administrative burden involved, [encourage the competent authorities to] use electronic means for conducting such examinations and [to] provide opportunities for conducting such examinations from the home country of the applicant.

AGREEMENT REACHED ON AN *AD REFERENDUM* BASIS

Members agreed on an ad referendum basis to include the following paragraph in the chapter on Qualification Procedures:

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.

CHAIR'S MARCH 2009 TEXT

IX. TECHNICAL STANDARDS

40. Members are encouraged to ensure maximum transparency of relevant processes relating to the development and application of domestic and international standards by non-governmental bodies.

MULTIPLE ALTERNATIVES

40. Members are encouraged to ensure transparency of relevant processes relating to the development and application of domestic and international standards by non-governmental bodies.

40. As a matter of good practice, Members involved in the development and application of measures relating to prudential standards and standards developed and applied by non-governmental standardisation bodies, should ensure maximum transparency of relevant processes for the benefit of other Members.

"NECESSITY TEST"-RELATED PROPOSAL

A group of Members suggested adding under chapter IX a paragraph before Paragraph 40:

Each Member shall ensure that any measures relating to application, monitoring, compliance and enforcement of technical standards are not more burdensome than necessary to ensure that a service conforms with the relevant technical standards, taking into account the risks that non-fulfilment would create.

CHAIR'S MARCH 2009 TEXT

41. Where technical standards are required and relevant international standards exist or their completion is imminent, Members should take them or the relevant parts of them into account in formulating their technical standards, except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of national policy objectives.

MULTIPLE ALTERNATIVES

41. Where technical standards are required and relevant international standards¹ exist [~~or their completion is imminent~~], Members [are encouraged to] [should] [shall] take them or the relevant parts of them into account in formulating their technical standards, except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of national policy objectives.

¹International standards are standards developed by relevant international organizations whose membership is open to the relevant bodies of at least all Members of the WTO.

41. Each Member shall use, as a basis for its technical standards, relevant international standards or international standards whose completion is imminent, except where such standards would be an ineffective or inappropriate means to fulfil its national policy objectives, for example because of fundamental climatic, geographical, technological or infrastructural factors.

"NECESSITY TEST"-RELATED PROPOSAL

One Member proposed to add the following paragraph to the Chapter on Technical Standards:

No Member may prepare, adopt, maintain or apply any technical standards with a view to or with the effect of creating an unnecessary obstacle to trade between the Members. For this purpose, Members shall ensure that such measures are not more trade-restrictive than necessary to fulfil a national policy objective, taking account of the risks non-fulfilment would create. Such national policy objectives are, inter alia: the protection of human health or safety, animal or plant life or health; the protection of public morals and the maintenance of public order; national security requirements; the access to essential services; the quality of the service; professional competence; the integrity of the profession; or the prevention of deceptive and fraudulent practices. Requirements should be based on objective and transparent criteria.

CHAIR'S MARCH 2009 TEXT

X. DEVELOPMENT

42. A developing country Member shall not be required to apply these disciplines for a period of [X] years from their date of entry into force. Before the end of this transitional time period, upon request by a developing country Member, the Council for Trade in Services may extend the time period to implement these disciplines, based on that Member's level of development, size of the economy, and regulatory and institutional capacity.

MULTIPLE ALTERNATIVES

42. A developing country Member shall not be required to apply these disciplines as they pertain to qualification requirement, qualification procedures, licensing requirements and licensing procedures as set forth in paragraphs [X through XX] for a period of 1 year from the date of entry into force of these disciplines. All other provisions of these disciplines, including general provisions, and provisions relating to transparency, shall apply to all Members from their entry into force. Before the end of this transitional time period, upon request by a developing country Member, the Council for Trade in Services may extend the time period to implement these disciplines for up to two additional years. Such request and grant of extension shall be made as follows:

- (a) A Member that maintains authorization practices not in compliance with paragraphs [X through XX], and that wishes to make use of these procedures (the "requesting Member"), shall initiate consultations with the Council for Trade in Services in respect of an extension for such authorization practices, on the basis of documentation to be submitted to the Council not later than three months after entry into force of these disciplines. This documentation shall consist of (i) an identification by the requesting Member of those authorizations for which it is seeking an extension under these procedures; (ii) a statement that the extension is necessary in light of the regulatory and institutional capacity of the requesting Member and the competent authority; and (iii) a statement, for each authorization for which it is seeking an extension under these procedures, identifying the paragraphs of these disciplines with which such authorization is not in compliance.
- (b) Not later than six months after entry into force of these disciplines, the requesting Member shall submit to the Council for Trade in Services a notification providing detailed information about the authorization for which extension is being sought, including a detailed description of the manner in which that authorization is not in conformity with paragraphs [X through XX].
- (c) Following receipt of the notifications referred to in subparagraph (b), the Council for Trade in Services shall consider those notifications, with an opportunity for Members to seek clarification of the notified information and/or additional detail with a view to understanding the nature and operation of the notified authorizations. Not later than one year from the date of entry into force of these disciplines, the Council for Trade in Services shall grant extensions for an additional two year period for those authorizations notified pursuant to these procedures, where the Council concludes that the requesting Member has demonstrated a need for such extension in light of the regulatory and institutional capacity of the Member and the competent authority.
- (d) One year following the grant of such extension, the requesting Member shall file with the Council an updating notification describing any changes in the extended

authorization, and steps being taken by the requesting Member to bring the authorization into full conformity with these disciplines. Failure to file such an updating notification shall terminate the extension.

42. (a) A developing country Member shall not be required to apply these disciplines for a period of [X] [5 to 7] years from their date of entry into force.

[Graduating LDCs shall benefit from this transitional time period from the date that their graduation becomes effective.]

(b) A developing country Member may still face particular difficulties which impair its ability to implement these disciplines after the expiry of that period due to its special financial, trade and development needs, regulatory and institutional capacity or other factors, including in circumstances related to the introduction of any new, or any changes to existing laws or regulations.

Before the end of the period referred to in paragraph (a), a developing country Member may notify the existence of those particular difficulties to the Council for Trade in Services. In such cases, that developing country Member shall be granted extensions of the period to implement these disciplines.

CHAIR'S MARCH 2009 TEXT

43. A Member may accord reduced administrative fees to service suppliers from developing country Members.

MULTIPLE ALTERNATIVES

43. A developed country Member shall endeavour to accord reduced administrative fees to service suppliers from developing country Members.

43. A Member may accord reduced administrative fees to service suppliers from developing country Members and in particular from LDCs.

43. A Member may, to the extent feasible, accord reduced administrative fees to service suppliers from developing country Members.

43. A Member may accord reduced administrative fees to small and medium sized enterprises or natural persons, based on financial hardship.

43. A Member may accord, to the extent feasible, reduced administrative fees to service suppliers from developing country Members and LDCs, in accordance with Article II of the GATS.

CHAIR'S MARCH 2009 TEXT

44. Where circumstances allow for the phased introduction of new licensing requirements and procedures, qualification requirements and procedures, and technical standards, Members shall consider longer phase-in periods for such measures in service sectors and modes of supply of export interest to developing country Members.

SINGLE ALTERNATIVE

44. Where [regulatory constraints] [circumstances] allow for the phased introduction of new licensing requirements and procedures, qualification requirements and procedures, and technical standards, [and this is in the interest of the developing country supplier,] [developed country] Members shall consider longer phase-in periods for such measures in service sectors and modes of supply of export interest to developing country Members and in particular from LDCs.

CHAIR'S MARCH 2009 TEXT

45. Developed country Members, and to the extent possible other Members, shall provide technical assistance to developing country Members and in particular least-developed country Members (LDCs), upon their request and on mutually agreed terms and conditions. Technical assistance shall be aimed, *inter alia* at:

- (j) developing and strengthening institutional and regulatory capacities to regulate the supply of services and to implement these disciplines;
- (k) assisting developing country and in particular LDC service suppliers to meet the relevant requirements and procedures in export markets;
- (l) facilitating the establishment of technical standards and participation of developing country Members and in particular LDCs facing resource constraints in the relevant international organizations;
- (m) assisting, through public or private bodies and relevant international organizations, service suppliers of developing country Members in building their supply capacity and in complying with domestic regulation in their markets. Such assistance may also be provided directly to the respective service suppliers.

SINGLE ALTERNATIVE

45. Developed country Members, and to the extent possible other Members, [may][shall] provide technical assistance to developing country Members and in particular least-developed country Members (LDCs), upon their request and on mutually agreed terms and conditions. Technical assistance shall be aimed, *inter alia* at:

- (n) developing and strengthening institutional and regulatory capacities to regulate the supply of services and to implement these disciplines;
- (o) assisting developing country and in particular LDC service suppliers to meet the relevant requirements and procedures in export markets;
- (p) facilitating the establishment of technical standards and participation of developing country Members and in particular LDCs facing resource constraints in the relevant international organizations;
- (q) assisting, through public or private bodies and relevant international organizations, service suppliers of developing country Members in building their supply capacity and in complying with domestic regulation in their markets. Such assistance may also be provided directly to the respective service suppliers.

CHAIR'S MARCH 2009 TEXT

46. LDCs shall not be required to apply these disciplines. LDCs are nonetheless encouraged to apply these disciplines, to the extent compatible with their special economic situation and their development, trade and financial needs.

AGREEMENT REACHED ON AN *AD REFERENDUM* BASIS

Same as above.

PROPOSAL FOR AN ADDITIONAL PARAGRAPH

During consultations, two Members suggested including the following language in the Chapter on Development:

Nothing in these disciplines shall oblige a Member to take action or refrain from taking action, in a manner inconsistent with its Constitution.

CHAIR'S MARCH 2009 TEXT

XI. INSTITUTIONAL PROVISIONS

47. The Council for Trade in Services shall establish a Committee on Domestic Regulation to oversee the implementation of these disciplines and the operation of Article VI of the GATS including any further work under Article VI:4 of the GATS.

CHAIR'S MARCH 2009 TEXT

48. The Council for Trade in Services shall, upon request from any Member, review the operation of these disciplines and make recommendations as appropriate.

Attachment:
Room Document

20 March 2009

Working Party on Domestic Regulation

- DRAFT -

DISCIPLINES ON DOMESTIC REGULATION PURSUANT TO GATS ARTICLE VI:4

Second Revision

Informal Note by the Chairman

Please find attached a second revised draft of possible regulatory disciplines pursuant to Article VI:4 of the GATS.

This draft has been prepared, under my responsibility, with a view to registering progress in discussions that have taken place in the Working Party since February 2008. It is intended to provide a point of departure for the work of the WPDR under its incoming Chairperson.

This revision only reflects drafting suggestions on a few issues which I feel have enjoyed wide support by delegations during our discussions. It does not address other issues on which differences persist. Although, in several instances, work on these has advanced significantly, I have refrained from suggesting any compromise language, as I do not wish to influence future consideration of these issues under the guidance of my successor. The absence of any drafting changes regarding those issues should not be construed to solidify the language as it stands.

Therefore, the content of my Note on outstanding issues (Room Document of 12 March 2008), as well as the 20 or so issues raised by delegations (Room Document of 25 June 2008), will require further negotiation and debate in the Working Party.

- DRAFT -

DISCIPLINES ON DOMESTIC REGULATION

I. INTRODUCTION

1. Pursuant to Article VI:4 of the GATS, Members have agreed to the following disciplines on domestic regulation.

2. The purpose of these disciplines is to facilitate trade in services by ensuring that measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards are based on objective and transparent criteria, such as competence and the ability to supply the service, and do not constitute disguised restrictions on trade in services.

3. Members recognize the right to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right. These disciplines should not be construed to prescribe or impose particular regulatory approaches or any particular regulatory provisions in domestic regulation.

4. Members recognize the difficulties which may be faced by individual developing country Members in implementing disciplines on domestic regulation, particularly difficulties relating to level of development, size of the economy, and regulatory and institutional capacity. Members recognize the difficulties which may be faced by service suppliers, particularly those of developing country Members, in complying with measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards of other Members.

II. DEFINITIONS

5. "Licensing requirements" are substantive requirements, other than qualification requirements, with which a natural or a juridical person is required to comply in order to obtain, amend or renew authorization to supply a service.

6. "Licensing procedures" are administrative or procedural rules that a natural or a juridical person, seeking authorization to supply a service, including the amendment or renewal of a licence, must adhere to in order to demonstrate compliance with licensing requirements.

7. "Qualification requirements" are substantive requirements relating to the competence of a natural person to supply a service, and which are required to be demonstrated for the purpose of obtaining authorization to supply a service.

8. "Qualification procedures" are administrative or procedural rules that a natural person must adhere to in order to demonstrate compliance with qualification requirements, for the purpose of obtaining authorization to supply a service.

9. "Technical standards" are measures that lay down the characteristics of a service or the manner in which it is supplied. Technical standards also include the procedures relating to the enforcement of such standards.

III. GENERAL PROVISIONS

10. These disciplines apply to measures by Members relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards affecting trade in services where specific commitments are undertaken. They do not apply to measures to the extent that they constitute limitations subject to scheduling under Article XVI or XVII.

11. Measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards shall be pre-established, based on objective and transparent criteria and relevant to the supply of the services to which they apply.

12. Nothing in these disciplines prevents Members from exercising the right to introduce or maintain regulations in order to ensure provision of universal service, in a manner consistent with their obligations and commitments under the GATS.

IV. TRANSPARENCY

13. Each Member shall publish promptly, through printed or electronic means, measures of general application relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards, as well as detailed information regarding these measures. This information shall include, *inter alia*:

- (a) whether any authorization, including application and/or renewal where applicable, is required for the supply of services;
- (b) the official titles, addresses and contact information of relevant competent authorities;
- (c) applicable licensing requirements and criteria, terms and conditions of licences, and licensing procedures and fees;
- (d) applicable qualification requirements, criteria and procedures for verification and assessment of qualifications including fees;
- (e) applicable technical standards;
- (f) procedures relating to appeals or reviews of applications;
- (g) monitoring, compliance or enforcement procedures including notification procedures for non-compliance;
- (h) where applicable, how public involvement in the licensing process, such as hearings and opportunity for comment, is provided for;
- (i) exceptions, derogations or changes to measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards; and
- (j) the normal timeframe for processing of an application.

Where publication is not practicable, such information shall be made otherwise publicly available.

14. Each Member shall maintain or establish appropriate mechanisms for responding to enquiries from any service suppliers regarding any measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards. Such enquiries may be addressed

through the enquiry and contact points established under Articles III and IV of the GATS or any other mechanisms as appropriate.

15. Each Member shall endeavour to ensure that any measures of general application it proposes to adopt in relation to matters falling within the scope of these disciplines are published in advance. Each Member should endeavour to provide reasonable opportunities for service suppliers to comment on such proposed measures. Each Member should also endeavour to address collectively in writing substantive issues raised in comments received from service suppliers with respect to the proposed measures.

V. LICENSING REQUIREMENTS

16. Where residency requirements for licensing not subject to scheduling under Article XVII of the GATS exist, each Member shall consider whether less trade restrictive means could be employed to achieve the purposes for which these requirements were established.

VI. LICENSING PROCEDURES

17. Each Member shall ensure that licensing procedures, including application procedures and, where applicable, renewal procedures, are as simple as possible and do not in themselves constitute a restriction on the supply of services.

18. Each Member shall ensure that the procedures used by, and the decisions of, the competent authority in the licensing process are impartial with respect to all applicants. The competent authority should be operationally independent of and not accountable to any supplier of the services for which the licence is required.

19. An applicant shall, in principle, not be required to approach more than one competent authority in connection with an application for a licence.

20. An applicant should be permitted to submit an application at any time, except where licenses are limited in numbers, including in public tendering. Where specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. Where possible, applications should be accepted in electronic format under the same conditions of authenticity as paper submissions.

21. The competent authority shall, within a reasonable period of time after receipt of an application which it considers incomplete, inform the applicant, to the extent feasible identify the additional information required to complete the application, and provide the opportunity to correct deficiencies.

22. Authenticated copies should be accepted, where possible, in place of original documents.

23. If an application for a licence is rejected by the competent authority, the applicant shall be informed in writing and without undue delay. In principle, the applicant shall, upon request, also be informed of the reasons for rejection of the application and of the timeframe for an appeal against the decision. An applicant should be permitted, within reasonable time limits, to resubmit an application.

24. Each Member shall ensure that the processing of an application for a license, including reaching a final decision, is completed within a reasonable timeframe from the submission of a complete application. Each Member shall endeavour to establish the normal timeframe for processing of an application.

25. Each Member shall ensure that a licence, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.

26. Each Member shall ensure that licensing fees³ are reasonable in terms of the costs incurred by the competent authority, including those for activities related to regulation and supervision of the relevant service, and do not in themselves restrict the supply of the service.

VII. QUALIFICATION REQUIREMENTS

27. Where a Member imposes qualification requirements for the supply of a service, it shall ensure that adequate procedures exist for the verification and assessment of qualifications held by service suppliers of other Members. In verifying and assessing qualifications, where the competent authority finds it relevant, it shall give due consideration to relevant professional experience of the applicant as a complement to educational qualifications. Where the competent authority considers that membership in a relevant professional association in the territory of another Member is indicative of the level of competence or extent of experience of the applicant, such membership shall also be given due consideration.

28. Provided an applicant has presented all necessary supporting evidence of qualifications, the competent authority, in verifying and assessing qualifications, shall identify any deficiency and inform the applicant of requirements to meet the deficiency. Such requirements may include, *inter alia*, course work, examinations, training, and work experience. Where appropriate, each Member shall allow applicants to fulfil such requirements in the home, host or any third jurisdiction.

29. Residency requirements, other than those subject to scheduling under Article XVII of the GATS, shall not be a pre-requisite for assessing and verifying the competence of a service supplier of another Member.

30. Once qualification requirements and any applicable licensing requirements have been fulfilled, each Member shall ensure that a service supplier is allowed to supply the service without undue delay.

VIII. QUALIFICATION PROCEDURES

31. Each Member shall ensure that qualification procedures are as simple as possible and do not in themselves constitute a restriction on the supply of services.

32. An applicant shall, in principle, not be required to approach more than one competent authority for qualification procedures.

33. An applicant should be permitted to submit an application at any time. The competent authority shall initiate the processing of an application without undue delay.

34. Where examinations are required, each Member shall ensure that they are scheduled at reasonably frequent intervals. Applicants for examinations shall be allowed a reasonable period to submit applications.

35. The competent authority shall, within a reasonable period of time after receipt of an application, which it considers incomplete, inform the applicant, to the extent feasible, identify the

³ Licensing fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

additional information required to complete the application, and provide the opportunity to correct deficiencies.

36. Authenticated copies should be accepted, where possible, in place of original documents.
37. If an application for verification and assessment of qualification is rejected by the competent authority, the applicant shall be informed in writing and without undue delay. In principle, the applicant shall, upon request, also be informed of the reasons for rejection of the application and of the timeframe for an appeal against the decision. An applicant should be permitted, within reasonable time limits, to resubmit an application.
38. Each Member shall ensure that the processing of an application, including verification and assessment of a qualification, is completed within a reasonable timeframe from the submission of a complete application. Each Member shall endeavour to establish the normal timeframe for processing of an application.
39. Each Member shall ensure that any fees relating to qualification procedures are commensurate with the costs incurred by the competent authorities and do not in themselves restrict the supply of the service.

IX. TECHNICAL STANDARDS

40. Members are encouraged to ensure maximum transparency of relevant processes relating to the development and application of domestic and international standards by non-governmental bodies.
41. Where technical standards are required and relevant international standards exist or their completion is imminent, Members should take them or the relevant parts of them into account in formulating their technical standards, except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of national policy objectives.

X. DEVELOPMENT

42. A developing country Member shall not be required to apply these disciplines for a period of [X] years from their date of entry into force. Before the end of this transitional time period, upon request by a developing country Member, the Council for Trade in Services may extend the time period to implement these disciplines, based on that Member's level of development, size of the economy, and regulatory and institutional capacity.
43. A Member may accord reduced administrative fees to service suppliers from developing country Members.
44. Where circumstances allow for the phased introduction of new licensing requirements and procedures, qualification requirements and procedures, and technical standards, Members shall consider longer phase-in periods for such measures in service sectors and modes of supply of export interest to developing country Members.
45. Developed country Members, and to the extent possible other Members, shall provide technical assistance to developing country Members and in particular least-developed country Members (LDCs), upon their request and on mutually agreed terms and conditions. Technical assistance shall be aimed, *inter alia* at:
- (a) developing and strengthening institutional and regulatory capacities to regulate the supply of services and to implement these disciplines;

- (b) assisting developing country and in particular LDC service suppliers to meet the relevant requirements and procedures in export markets;
- (c) facilitating the establishment of technical standards and participation of developing country Members and in particular LDCs facing resource constraints in the relevant international organizations;
- (d) assisting, through public or private bodies and relevant international organizations, service suppliers of developing country Members in building their supply capacity and in complying with domestic regulation in their markets. Such assistance may also be provided directly to the respective service suppliers.

46. LDCs shall not be required to apply these disciplines. LDCs are nonetheless encouraged to apply these disciplines, to the extent compatible with their special economic situation and their development, trade and financial needs.

XI. INSTITUTIONAL PROVISIONS

47. The Council for Trade in Services shall establish a Committee on Domestic Regulation to oversee the implementation of these disciplines and the operation of Article VI of the GATS including any further work under Article VI:4 of the GATS.

48. The Council for Trade in Services shall, upon request from any Member, review the operation of these disciplines and make recommendations as appropriate.

ANNEX II

**WORLD TRADE
ORGANIZATION**

S/WPGR/21
14 April 2011

(11-1925)

**REPORT BY THE CHAIRPERSON OF THE WORKING PARTY
ON GATS RULES**

1. The Working Party has continued to engage in focussed discussions on all three GATS Rules subjects: emergency safeguard measures, subsidies, and government procurement in services. In line with Annex C of the 2005 Hong Kong Ministerial Declaration, which states that "Members must intensify their efforts to conclude the negotiations on rule-making under GATS Articles X, XIII and XV in accordance with their respective mandates and timelines¹, Members have constructively engaged and further explored the issues at stake. Nevertheless, in each of the three areas, the respective proponents found it difficult to convince the broader Membership of the need to develop disciplines beyond those currently existing under the GATS. In all three areas, the problems, if any, that would need to be addressed by new disciplines, have not yet been sufficiently identified; neither have the benefits that would accrue from new or additional disciplines. As a result, discussions in the Working Party on GATS Rules have remained non-text-based, and essentially conceptual in nature.

2. This report describes the state of play of the Working Party's discussions and progress achieved under each of the three agenda items. It also outlines possible future work in fulfilment of the Working Party's mandate as set out in Annex C of the Hong Kong Ministerial Declaration.

I. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES (ARTICLE X)

3. On emergency safeguard measures (ESM), during the latter part of 2009, the Working Party conducted several rounds of technical discussions on the definition of "domestic industry". The Chairperson circulated an informal Note summarizing past discussions on that definition (JOB(09)/95). In this context, Members also examined the relevance to trade in services of the concept of "domestic industry" as treated under the WTO Agreements on anti-dumping, subsidies and safeguards. A related Secretariat Note was circulated in JOB(09)/146 and Corr.1. Discussions amongst Members focused on how the criteria of territory, registration, and ownership and control, as contained in the draft Annex on Article X Emergency Safeguard Measures proposed by the delegations of Brunei Darussalam, Cambodia, Indonesia, Malaysia, Myanmar, the Philippines, Thailand and Viet Nam (Attachment A of JOB(07)/155), could be used to define "domestic industry" in a services context.

4. In 2010, the above proponents proposed continuing with technical work, and advocated a presentation on the availability and adequacy of services statistics with respect to emergency safeguards. At its meeting of 24 March 2011, the Working Party for the first time delved into these questions, with two presentations by representatives of the WTO Secretariat: one on the availability

¹ Annex C of the Hong Kong Ministerial Declaration, paragraph 4, letter (a) to (c).

at the international level of disaggregated data on services trade flows that could potentially be relevant in a safeguards' context; the second one on the types of statistics used under the Safeguards Agreement in trade in goods. Members in responding to these presentations recognized the importance of having timely and reliable services' statistics and quantitative indicators, ideally on a highly disaggregated, sector-specific basis. Regarding future work, the ESM proponents hoped that these two presentations would provide a gateway for subsequent ones by Members on their national experiences/best practices in the compilation and use of services statistics, and on how current statistical deficiencies could be overcome. More focused discussions on sector- and mode-specific data that could be used in a potential safeguard investigation were deemed potentially useful.

II. NEGOTIATIONS ON GOVERNMENT PROCUREMENT (ARTICLE XIII)

5. The Working Party discussed in greater detail the Annex on Government Procurement in Services proposed by the delegation of the European Union (S/WPGR/W/54). To facilitate Members' consideration of the proposal, the Chairperson circulated an informal Note, which synthesised past exchanges and highlighted several issues for discussion (JOB(09)/114). The delegation of the European Union provided a presentation of the procedural rules contained in its proposal, as well as its suggested format for scheduling government procurement commitments. Two rounds of informal discussions examined various aspects of the proposed Annex, including its relationship with the WTO plurilateral Agreement on Government Procurement (GPA).

6. Since the latter part of 2010, the Working Party has pursued a series of dedicated discussions on the broader economic and developmental importance of government procurement in services, based on another proposal by the European Union (RD/SERV/23).² To date, the Working Party has held two dedicated sessions: one on the economic importance of government procurement in services; and one on services aspects of the GPA and the latter's impact on international procurement markets. It was observed in the discussions that commitments under the GATS were scheduled by modes of supply, whereas commitments under the GPA were not specific to individual modes of supply. It was suggested that the WPGR further examine the possible synergies between the GATS and the GPA as part of its future work.

7. In the coming months, the WPGR's focus would be on completing the series of dedicated discussions proposed in RD/SERV/23. Members also seemed open to further presentations or discussions that could flow from these. The Working Party intends to invite capital-based GPA experts to a dedicated session to share national experiences of opening up domestic procurement systems and seeking access to foreign procurement markets. This could be held during a forthcoming GPA negotiating week.

III. NEGOTIATIONS ON SUBSIDIES (ARTICLE XV)

8. In the area of subsidies, much time has been devoted to reviving the exchange of information mandated by Article XV of the GATS. In this connection, the Chairperson circulated an informal Note recalling a previously proposed definition of subsidies for the purpose of the information exchange (JOB(09)/96). At its meeting of 1 February 2010, the Working Party endorsed the Work Programme on Information Exchange on Subsidies as contained in JOB/SERV/1.

² The EU's proposal, dated 24 September 2010, proposed a range of topics on the economic importance of government-procurement transactions for discussion over several months.

9. Since the launch of the Work Programme, 18 submissions covering 44 WTO Members have been received to date.³ While an encouraging start, there is general acknowledgement that there is a great variety in the level of detail provided in the submissions received, and that more Members should join in this mandated exchange of information. So far, the Working Party held one session of dedicated discussions on the information provided by Members, with the aim of identifying potential systemic issues that could be relevant for the negotiations on necessary multilateral disciplines.⁴ That session brought some progress in Members' understanding on how subsidies are provided and on their potential trade effects. Members, however, acknowledged that more analysis needed to be done.

10. During 2010, the Working Party also continued discussions with a view to developing the necessary multilateral disciplines to avoid distortive effects on trade in services, as mandated under Article XV. Based on a proposal by the delegation of Switzerland for disciplines on export subsidies (JOB/SERV/36), discussions were undertaken on the concept of export subsidies in services and the possible distortions created. The delegation of the United States submitted questions for Members to identify possible trade-distortive effects of subsidies in services with a focus on practical commercial concerns (S/WPGR/W/59).

11. Regarding the possible way forward, some Members favour entering into negotiations to develop necessary multilateral disciplines to avoid trade-distortive effects of subsidies. A communication from India, Chile and Mexico proposed developing a roadmap for future discussions to fulfil the remaining part of the mandate of Article XV (JOB/SERV/37). According to its proponents, such a roadmap would necessarily be flexible, with no timelines attached. Other Members argue that, in the absence of concrete evidence of such effects, Members should refrain from entering into negotiations to devise any disciplines. Others are of the view that there is still useful conceptual and technical work that can be done short of entering into negotiations on new disciplines. Overall, there appears to be broad agreement on the desirability of obtaining more and better information on the potential or actual trade-distortive effects of subsidies. One unresolved question is whether any such identification of trade-distortive effects should be undertaken before Members embark upon further technical work or negotiations. At the WPGR meeting of 24 March 2011, it was suggested that Members and the Chair will continue to consult informally on resolving this question and will report back in due course.

³ Submissions were received from the delegations of Australia; Brazil; Canada; China; European Union; Chile; Colombia; Hong Kong, China; India; Japan; Korea; Mexico; New Zealand; Norway; Peru; Turkey; Chinese Taipei; and the United States. They were circulated in JOB/SERV/1/Add. 1 to 12.

⁴ WPGR meeting of 24 November 2010, see S/WPGR/M/71.